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In the Supreme Court of the United States

OCTOBER TERM, 1994

THOMAS A. MOORE, M.D.
Plaintiff-Petitioner

versus

BRENDA KELGER, ET AL
Defendant-Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX VOLUME II

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112 pp

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF HENRY FRANCES McKINELL

HENRY FRANCES McKINELL declares:

1. My name is Henry Frances McKinell. I am a Revenue Officer Group Manager with the Collection Division of the Internal Revenue Service ("IRS"). My post of duty is in Baton Rouge, Louisiana. I have been a Group Manager since July 10, 1974. As a Group Manager I supervise and evaluate the Revenue Officers in my group as they perform their respective duties.

2. The delinquent tax account of Dr. Thomas A. Moore was assigned to my group for collection. Dr. Moore owed in excess of $1.25 million in federal income taxes covering several years. The IRS expended much time and effort in attempting to collect these taxes over a long period of time. I viewed Dr. Moore as an illegal tax protestor who had employed many subterfuges and manipulation of assets to defeat the collection of the taxes.

For example, Dr. Moore had transferred all his assets to his wife, or caused assets to be placed in her name, in an attempt to preclude their seizure by the IRS.

3. At one time, Dr. Moore's account was handled by Revenue Officer Gene Nepveaux. Revenue Officer Nepveaux requested approval from the District Counsel of the IRS to file nominee liens on Dr. Moore's wife and a sham corporation.

4. As a result of a realignment, Dr. Moore's account was transferred to Revenue Officer Brenda Felger. Once the approval of District Counsel was received on the nominee liens, Revenue Officer Felger began coordinating the filing of the nominee liens and seizure action to effect collection. To do this, she obtained the cooperation of the Examination Division to make Revenue Agents available as accompanying IRS employees. She worked with the Criminal Investigation Division ("CID") to have them provide Special Agents as armed escorts. She secured a writ of entry from the U.S. District Court to enter Dr. Moore's residence to seize assets subject to levy.

5. On March 29, 1990, a team of Revenue Officers, Revenue Agents and Special Agents went to Dr. Moore's residence to execute the writ of entry and seize assets subject to levy located at the residence. After dealing with the initial opposition by the taxpayer and his attorney, the IRS employees began the inventory and seizure of the contents of the residence.

6. I arrived at Dr. Moore's residence around 9:30 A.M. I left around 12:30 or 1:00 A.M. on March 30. As a

Group Manager, I did not personally seize any items, but oversaw the actions taken by other IRS employees.

7. At some point during the day, I was shown a file folder that held invoices, jewelry appraisals, and other documents relating to the assets that were being seized or could be seized at the residence. I viewed this file folder as pertinent to the search for property subject to levy as authorized by the writ of entry. I requested Revenue Officer Aide Dina Bonvillain to make a copy of the contents of the file folder. The Revenue Officer Aide went to the IRS office to copy the documents. The file folder was then returned to Dr. Moore's residence and left there.

8. When I first arrived at the residence, Mrs. Moore was in the bathroom. Revenue Officer Rebecca Patton was stationed outside the door. Mrs. Moore spent a long time in the bathroom. The IRS employees later discovered a floor safe in the bathroom. Based on the information that I had seen in the file folder, it is my belief that Mrs. Moore may have removed valuable pieces of jewelry from the safe, and removed them from the residence beyond our seizure, since the pieces could not later be found in the house.

9. In the afternoon, I was advised that several file drawers and computer disks had been found in one of the rooms that Dr. Moore had set up as an office. These files and computer disks appeared to be the records that Dr. Moore had denied he kept in testimony he had given under oath when the IRS had sought the enforcement of a summons in District Court. The IRS had earlier summoned these records to gather information necessary for the collection of Dr. Moore's tax liabilities.

10. I viewed these files and computer disks as being evidence that Dr. Moore had committed perjury before the District Court. Therefore, I gave instruction to the employees to seize the records as evidence that could be used to bring perjury charges against Dr. Moore.

11. After discussing this matter with James Valentine, the Branch Chief for the Collection Division, who was also present at the house, it was decided that we should get legal advice from District Counsel attorney Stevens Moore and Assistant United States Attorney Jill Ondrejko, who were at the IRS office in Houma. The attorneys recommended that a search warrant be obtained for the seizure of the records.

11. The records were placed back in their original location. When the search warrant was received, the records were inventoried and seized by CID agents.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of January, 1993.

/s/ Henry Frances McKinell

HENRY FRANCES McKINELL

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF MICHELLE BABIN MOORE

MICHELLE BABIN MOORE declares:

1. My name is Michelle Babin Moore. From January 11, 1988, until January 14, 1992, I was a Revenue Officer with the Collections Division of the Internal Revenue Service. My post of duty was in Houma, Louisiana. I left the Internal Revenue Service when I married and relocated to Lewisville, Texas.

2. My duties as a Revenue Officer included the collection of delinquent tax accounts. As part of my duties, I was also required to perform other duties as assigned by the Internal Revenue Service.

3. On March 29, 1990, I was assigned to assist in the seizure of property in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

4. On the morning of March 29, 1990, I left the I.R.S. office in Houma with Revenue Officer Donna Berry at approximately 7:30 A.M. and proceeded to Chauvin, Louisiana, to seize and inventory a houseboat. After we completed the inventory of the houseboat and had the locks changed, I went to Dr. Moore's residence at 207 Oak Alley Drive in Houma.

5. I arrived at Dr. Moore's residence sometime between 12:00 and 1:00 P.M. I left the residence, I believe, twice during the seizure. The first time I left to get lunch, the second time was to go to the I.R.S. office for some more seizure tags and blue bags with seals to secure jewelry and other valuables. I finally left the residence between 3:30 and 4:30 P.M. and returned to the I.R.S office to leave town for the weekend.

6. While at the residence, I assisted with the inventory in the dining area. Although I cannot remember all items inventoried, I do remember assisting with the china, crystal, silver, and various items in the location. I also assisted with counting cash secured by other agents in various rooms of the house. This cash was brought to me in the dining area.

7. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this ____ day of January, 1993.

/s/ Michelle Babin Moore

MICHELLE BABIN MOORE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF STEVENS E. MOORE

STEVENS E. MOORE declares:

1. My name is Stevens E. Moore. I am a docket attorney in the New Orleans District Counsel office for the Internal Revenue Service. I have been in this position since October, 1984.

2. My primary duties as a docket attorney include representing the Commissioner of the Internal Revenue Service in the U.S. Tax Court, reviewing proposed notices of deficiencies, and rendering advice to the Examination Division of the Internal Revenue Service during large case audits; reviewing recommendations for criminal prosecution of taxpayers suspected of violating criminal tax statutes; assisting the Collection Division of the Internal Revenue Service collect taxes by rendering advice in legal matters, including the adequacy of writs of entry, the filing of nominee liens, and the referral to the United States At-

torney of actions in bankruptcy cases.

3. The case of Dr. Thomas Moore first was assigned to me on July 14, 1987. During the course of my involvement in the case of Dr. Moore, I recommended that his wife be deemed the nominee of Dr. Moore with respect to certain assets. This recommendation was adopted by my office, and was forwarded to the Collection Division on February 12, 1990.

4. In March, 1990, Revenue Officer Brenda Felger requested my office's assistance in drafting writs of entry for the search, seizure and inventory of assets of Dr. Moore whether in his name or in the name of his nominees, Mrs. Moore and Q-B Tek, Inc. I assisted Revenue Officer Felger in drafting the application for a writ of entry for the home of Dr. Moore. I also accompanied Revenue Officer Felger to the United States Attorney's office for approval of the application. Additionally, I accompanied Revenue Officer Felger to the chambers of Magistrate Alma Chasez to obtain the order for the writ.

5. Prior to the execution of the writ of entry, I rendered advice to Revenue Officer Felger pertaining to legal considerations involving the execution of the writ. I attended a planning meeting on March 28, 1990, in Houma, Louisiana, to participate in discussions on the execution of the writ of entry and the seizure of property on March 29, 1990.

6. On March 29, 1990, I traveled to Houma and remained at the office of the Internal Revenue Service in Houma to be available to answer any questions that would

arise during the course of the execution of the writ of entry and the seizure of property.

7. I received a telephone call at approximately 3:30 p.m. from, to the best of my recollection, Henry McKinell, Collection Group Manager for the Houma post of duty. Mr. McKinell told me that while the Internal Revenue Service employees were removing items from a desk, which the Service had seized, they found records which appeared to be patient billing records. He asked my opinion about seizing the records. I told Mr. McKinell that I would discuss his question with the appropriate persons and get back to him. Jill Ondrejko, an Assistant United States Attorney for the Eastern District of Louisiana, was with me in Houma. We conferred and concluded that the records were those that Dr. Moore testified in court he did not maintain, and therefore could be evidence of the crime of perjury. We therefore decided that I would obtain advice from my District Counsel in New Orleans.

8. I called my office and spoke to Assistant District Counsel Louis John Zeller, Jr., and Steve Waller, Deputy Regional Counsel (Criminal Tax). Both concluded that the best approach was to obtain a search warrant to seize the records.

9. Based upon their advice, AUSA Ondrejko called an Assistant United States Attorney in her office and explained to him the need for the search warrant. I did not see the application, affidavit or search warrant before their submission for approval by a Magistrate. Only the signed search warrant was faxed to me, by Special Agent Fred Boyd of the New Orleans District Criminal Investigation

Division of the Internal Revenue Service, at the Houma post of duty.

10. After receiving the search warrant, AUSA Ondrejko and I carried the search warrant to the home of Dr. Moore, and handed it to Phil Guilott, Special Agent with CID. AUSA Ondrejko and I entered Dr. Moore's home and viewed the records and concluded that they were patient billing records. The records were then seized by Special Agents Guilott and Louis Oubre.

11. AUSA Ondrejko and I also viewed the inventory and seizure of the assets in the home. Neither AUSA Ondrejko nor I searched, inventoried or seized any assets in the home. We remained at the house until approximately 9:30 p.m., after which we departed, and returned to New Orleans.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19th day of January, 1993.

/s/ Stevens E. Moore

STEVENS E. MOORE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF EUGENE E. NEPVEAUX

EUGENE E. NEPVEAUX declares:

1. My name is Eugene E. Nepveaux. I am a Revenue Officer with the Collection Division of the Internal Revenue Service. My post of duty is in Lafayette, Louisiana. I have been a Revenue Officer for over 23 years.

2. My duties as a Revenue Officer include the collection of delinquent tax accounts. I was assigned to the collection case of Dr. Thomas A. Moore from April 1987 through February 1990. I worked the case from an initial demand for payment in April 1987 to the point of recommending the filing of nominee liens against his wife, Dorothy Lynn Moore. The nominee liens recommendation was approved by District Counsel of the Internal Revenue Service in February 1990.

3. In February 1990, as a result of a realignment of

the collection groups, I was instructed to transfer the collection file on Dr. Moore to Revenue Officer Brenda Felger in Houma, Louisiana.

4. I was requested to accompany Revenue Officer Felger in the seizure of assets to take place on March 29, 1990. On that date, at approximately 9:00 a.m., Revenue Officer Felger and I proceeded to the residence of Dr. Moore. We were accompanied by Special Agents Phil Guilott and Louis Oubre. Once at Dr. Moore's house, I witnessed Revenue Officer Felger made demand upon Dr. Moore for the payment of his tax liabilities, as she delivered the Levy (Form 668-B) to him. I also witnessed Revenue Officer Felger advising Dr. and Mrs. Moore that the purpose of our visit to the residence was to effect the seizure of the house and of all movable property located on the premises.

5. I gave assistance to Revenue Officer Felger throughout the day by taking inventory of items located throughout the entire premises. I wrapped, packaged and boxed many items. I was on the premises from 9:00 a.m. until 1:00 a.m. on March 30.

6. I believe that Dr. Moore has tried during the years to place assets beyond the reach of the Internal Revenue Service. He accrued a tax liability in excess of $1.2 million, yet claimed he owned no property. Mrs. Moore on the other hand, while working as a secretary for Dr. Moore, claimed to own a Rolls Royce and valuable real estate, among many other items of property.

7. While at Dr. Moore's residence, which Mrs. Moore

claimed belonged to her, I seized assets while having good reasons to believe that they indeed belonged to Dr. Moore. He didn't like it. I had several sporadic conversations with Dr. Moore throughout the day. In one instance he insisted on reading to me from a book by a Russian author (I believe the author was Solzhenitsyn). In another instance he referred to me as a "venereal wart on the anus of an AIDS-infected whore."

8. During the day, while removing items from drawers in order to move furniture out to the moving truck, I came across many documents. I viewed these documents in passing to determine whether they were subject to levy. As a Revenue Officer, I know and knew then, that certain documents, such as stock certificates, promissory notes and bearer papers, are subject to levy by the Internal Revenue Service, and I had to be sure that I did not fail to seize all assets subject to levy that could be located at the house.

9. Sometime in the afternoon, I was notified that certain files had been found in an office at the residence. I had been the Revenue Officer who had served an Internal Revenue Service summons upon Dr. Moore to produce information that would help me to determine his financial condition and locate assets subject to levy. Dr. Moore had earlier testified in court that he did not have the records I had summoned.

10. When I was notified that the files had been found, I went to the office and perused the files. The files were indeed the records that Dr. Moore had testified he did not have. Later on, the decision was made to get a search war-

rant to seize the files..

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of January, 1993.

/s/ Eugene E. Nepveaux

EUGENE E. NEPVEAUX

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF JILL L. ONDREJKO

JILL L. ONDREJKO declares:

1. My name is Jill L. Ondrejko. I have been employed as an Assistant United States Attorney (AUSA) in New Orleans, Louisiana, since February, 1989.

2. As an AUSA, it was part of my responsibility to handle the Internal Revenue Service summons enforcement docket. I was also required to handle other duties consistent with my position as an AUSA. I discontinued managing the summons enforcement docket in 1991.

3. As part of my duties while assigned the Internal Revenue Service summons enforcement docket, it was my obligation to prepare and file with the District Court petitions to enforce Internal Revenue Service summonses at the request of the Internal Revenue Service. In connection with this duty, I was referred several cases requesting en-

forcement of various summonses served upon Dr. Thomas A. Moore. Dr. Moore had refused to comply with the summonses and the Service had requested that he be compelled by the Court to provide the information requested in the summonses.

4. In June of 1989, I filed a petition to enforce an Internal Revenue Service summons served on Dr. Moore requesting an abundance of information, including, but not limited to, various patient information records. After many and lengthy hearings before U.S. Magistrate Judge Alma Chasez and U.S. District Judge Robert Collins, Dr. Moore was ordered to produce the records, and subsequently held in contempt when he declined to do so. Although Dr. Moore was ordered to produce the information requested by the summons, he refused to do so claiming that the records did not exist.

5. On March 29, 1990, I was at the office of the Internal Revenue Service in Houma, Louisiana, with Stephens Moore, an attorney with the office of District Counsel. We were available to assist the Internal Revenue Service in answering any legal question that might arise in the context of a seizure of property from Dr. Moore's home and other locations.

6. Stevens Moore and I were called by the Internal Revenue Service employees who were at the home of Dr. Moore. The employees had discovered records in the residence that resembled those records that Judge Collins had ordered Dr. Moore to produce, but which Dr. Moore claimed did not exist. We decided that a search warrant should be obtained before seizing the records because

criminal overtones of perjury and obstruction of justice were involved.

7. I contacted a fellow AUSA in New Orleans to request that he prepare an application for a search warrant in order to seize the records. I told the AUSA that records had been found by employees of the Internal Revenue Service at the residence of Dr. Moore that were evidence that Dr. Moore had committed perjury and had been engaged in the obstruction of justice. I did not see the search warrant application and supporting documents prior to their submission to a Magistrate in New Orleans. The search warrant was signed by U.S. Magistrate Judge Ivan Lemelle. It was then faxed to the Internal Revenue Service office in Houma.

8. Subsequently, Stevens Moore and I went to Dr. Moore's residence. I do not recall the precise time at which we arrived at the residence not the time we left, but do remember it was late in the afternoon when we arrived.

9. While at the residence, we reviewed the records which the Internal Revenue Service employees had found. The documents included patient invoices and accounts receivable, and were the records which the Court had earlier ordered that Dr. Moore produce. However, Dr. Moore had refused to produce the records contending that the did not exist, when in fact they did.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 20th day of January, 1993.

/s/ Jill L. Ondrejko

JILL L. ONDREJKO

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF LOUIS B. OUBRE III

LOUIS B. OUBRE III declares:

1. My name is Louis B. Oubre III. I am employed as a Special Agent with the Criminal Investigation Division of the Internal Revenue Service. My post of duty is in New Orleans, Louisiana. As of March 29, 1990, I had been a Special Agent for approximately 2 years and 7 months.

2. My duties as a Special Agent include the authority to investigate, to execute and serve search warrants and arrests warrants, to serve subpoenas and summonses, to make arrests without warrants, to make seizures of property subject to forfeiture, and to require and receive information as to all matters relating to the laws and regulations enforced and administered by the Internal Revenue Service. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service.

3. In the morning of March 29, 1990, Special Agent Philip Guilott, Revenue Officers Brenda Felger and Eugene Nepveaux, and I proceeded to the residence of Dr. Thomas A. Moore. Dr. Moore's spouse answered the door. She was informed of the purpose why we were there. She informed us that she needed to let out the dogs which were inside the house. She left and returned to the door a few minutes later. It was at that time that we entered the residence. Revenue Officer Felger explained to her that we were there for the purpose of executing the writ of entry and the seizure of property. Mrs. Moore exited the great room, where we were standing, and went into a room which we later learned was the bedroom. Several minutes later Dr. Moore exited the room and walked toward us. Revenue Officer Felger then began to explain to Dr. Moore our purpose for being at the residence.

4. As Special Agents, Philip Guilott and I were present at the seizure for the protection of Internal Revenue Service personnel as well as that of the taxpayer. We were there to assure that no one interfered with the agents in the performance of their duties.

5. After entering the house and securing the premises, both Special Agent Guilott and I began to randomly canvass the area to assure that the seizure was proceeding without any interference from outside forces.

6. Dr. Moore departed the residence on several occasions, one time returning with his attorney. On one occasion, due to the fact tht Dr. Moore's attorney was harassing Group Manager H.F. McKinell and Revenue Officer Felger, I was summoned to give them relief. I told the at-

torney that if he did not cease his harassment and allow the revenue officers and agents to perform their assigned tasks, I would be forced to take action which could possibly include removing him from the premises while the officers/agents performed their duties.

7. Later that afternoon, I was informed that while clearing out the contents of a desk for the purpose of seizing it, the officers/agents came across what appeared to be patient records. It was at this time that District Counsel and an Assistant United States Attorney were contacted. They requested that we apply for a search warrant.

8. After application and issuance of the search warrant, Special Agent Guilott and I seized the records described in the search warrant. We left a copy of the search warrant along with the inventory taped to the wall in the foyer.

9. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 10th day of January 1993.

Louis B. Oubre III

LOUIS B. OUBRE III

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF JOHN J. REEDY, JR.

JOHN J. REEDY, JR., declares:

1. My name is John J. Reedy, Jr. I am a Tax Examiner with the Bankruptcy and Insolvency Unit of the Special Procedures Function of the Internal Revenue Service in New Orleans, Louisiana. On March 29, 1990, I was a Revenue Officer with the Collection Division of the Intenal Revenue Service. My post of duty was in Houma, Louisiana. At that time, I had been a Revenue Officer for approximately five years.

2. My duties as a Revenue Officer included the collection of delinquent tax accounts. As part of my duties, I was also requird to perform other duties as assigned by the Internal Revenue Service. On March 29, 1990, I was assigned to assist in the seizure of property in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

3. On the morning of March 29, 1990, I went to Premier Bank in Houma to serve a notice of levy and a summons and to seize any bank deposit boxes at the bank if any were found. After this was completed, I traveled to Dr. Moore's residence at 207 Oak Alley Drive to assist in a household goods seizure.

4. I arrived at Dr. Moore's residence at approximately 10:30 A.M. and left at approximately 6:30 P.M.

5. While at the residence, I helped to inventory one bedroom and a room containing a large wine supply.

6. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of January, 1993.

/s/ John J. Reedy, Jr.

JOHN J. REEDY, JR.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF TINA SAMANIE

TINA SAMANIE declares:

1. My name is Tina Samanie. I am a Revenue Agent with the Examination Division of the Internal Revenue Service. My post of duty is in Houma, Louisiana. I have been a Revenue Agent since November 3, 1986.

2. As a Revenue Agent my primary duty is to examine federal income tax returns. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service.

3. On March 29, 1990, I was assigned to assist Revenue Officers of the Collection Division of the Internal Revenue Service in the seizure of property from the residence located at 207 Oak Alley Drive, Houma, Louisiana, in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

4. I arrived at Dr. Moore's residence at approximately 10:00 A.M. and left for lunch at approximately 12:30 P.M. I returned from lunch at approximately 1:30 P.M. I left the residence again at approximately 4:30 P.M. and returned at approximately 6:00 P.M. I left the residence at approximately 9:00 P.M.

5. While at the residence, I assisted the Revenue Officers inventory the property being seized. I inventoried items in the bedroom, bathroom, living room and wine room. I inventoried items such as jewelry from the bedroom and bathroom, pictures from the living room, and wine from the wine room. I listed these items on a plain sheet of paper.

6. The only conversation I had with Dr. Moore was to ask him not to take my photograph. He continued to try, and I told him that I would seize the camera if he did not stop.

7. I did not look at or seize any documents, papers or records at Dr. Moore's residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of January, 1993.

/s/ Tina Samanie

TINA SAMANIE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF JAMES M. VALENTINE

JAMES M. VALENTINE declares:

1. My name is James M. Valentine. I held the position of Chief of Branch I, Collection Division, New Orleans District, Internal Revenue Service from February 1983 to January 1987, and again from October 1988 to November 30, 1990. I retired from the Internal Revenue Service on November 30, 1990. I now live in Malawi, Africa.

2. While a Branch Chief, I managed seven (7) subordinate Group Managers in six groups over a designated area of the State of Louisiana. The groups consisted of Revenue Officers involved in the collection of delinquent federal taxes and the securing of delinquent tax returns.

3. On March 29, 1990, one of the groups under my supervision was involved in the seizure of assets subject to levy from the residence of Dr. Thomas A. Moore. The

Revenue Officer assigned to the case had previously obtained from the District Court a writ of entry to enter the residence.

4. I arrived at the residence around 11:30 a.m. and left sometime in the afternoon. A Branch Chief is not normally on site for the seizure of assets. However, Dr. Moore's case had some of the characteristics of tax protestor type activity, and I was concerned about the safety of our employees.

5. I did not personally search the residence or seize any items. In the afternoon of March 29, I was shown what looked like account receivable records. These records had been found while our employees were searching for assets to seize. Since Dr. Moore had denied having this type of records under oath, I told Group Manager Henry McKinell that this was a matter for discussion with counsel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 12th day of January, 1993.

/s/ James M. Valentine

JAMES M. VALENTINE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF STEVE FANGUY

STEVE FANGUY declares:

1. My name is Steve Fanguy. I am a Revenue Officer with the Collection Division of the Internal Revenue Service. My post of duty is in Houma, Louisiana. As of March 29, 1990, I had been a Revenue Officer for approximately three and a half years.

2. My duties as a Revenue Officer include the collection of delinquent tax accounts. As part of my duties, I am also required to perform other duties as assigned by the Internal Revenue Service. On March 29, 1990, I was assigned to assist in the seizure of property in an attempt to collect the unpaid federal income tax liabilities of Dr. Thomas A. Moore.

3. Prior to that date, I had knowledge of Dr. Moore's lack of cooperation with the IRS. The Dr. Moore case had

been on-going since I was assigned to the Houma post of duty in October 1986. I believe that in 1989 I escorted Revenue Officer Gene Nepveaux when he served an IRS summons relating to the collection of Dr. Moore's taxes. Over the years, and especially in 1989 and 1990, in view of the failure of Dr. Moore to comply with IRS summonses and the recommendation that nominee liens be approved, it became more evident to me that enforcement action would be the imminent resolution of the case.

4. I arrived at Dr. Moore's residence at approximately 10:45 A.M. and left at approximately 11:45 P.M. Upon arrival at the residence, I began to inventory assets for the purpose of seizure. During the process, I called out the descriptions of the assets being seized to a co-worker listing them on legal sheets of paper. These sheets would later be transcribed to Forms 2433.

5. I was assigned to assist a variety of co-workers, calling out assets being seized throughout the day in various rooms. The rooms included the den, master bedroom, spare bedroom, hall, bathroom, closets, a wine closet, an office area, the attic, and garage.

6. Sometime in the afternoon, large assets needed to be loaded into the moving van. This was required because to load a moving van securely all large assets must be loaded first and then the remaining smaller assets and boxes. During this process, as directed by my Group Manaager, dresssers were emptied of all clothing and other assets that would not be seized. During the emptying of a cabinet in the den, a hand gun was found in a drawer filled with photo packages. I immediately called for the Criminal Investiga-

tion ("CID") Agents to remove the weapon and verify that the chamber was empty.

7. Upon entering the office in the back of the house, I found that two desks and computers needed to be disassembled because they were the only remaining large assets that needed to be moved to the moving van before other items could be loaded. I began surveying the drawers of the desks to detrmine the volume of their contents to locate enough floor space for all the miscellaneous items not worthy of seizure. The room was small and the movers needed enough space to maneuver the furniture.

8. As I surveyed the drawers of the desk near the hallway, I only found items that could be removed and placed on the floor easily and take little space. I continued to remove the contents of the other desk's drawers until I opened the left hanging file drawer and discovered numerous files. As I saw the files, in determining where I should place them to empty the desk prior removing it to the van, I realized these were not typical household files, but instead numerous files containing labels with individual names. I realized that these files could be the patient records which Dr. Moore had testified, under the penalties of perjury, he did not have when the Internal Revenue Service was enforcing a summons in the District Court. I did not look at the contents of the files but did notice they contained labels with individual names.

9. Revenue Agent Cyrus Fanguy identified in a bookcase more individually named files of the same nature of those found in the desk. Boxes of computer disks were also found that appeared to be labelled for account

receivable records which Dr. Moore had also testified he did not have.

10. My Group Manager was advised of the findings. I requested direction on the removal of the records from the desk to enable the desk to be removed from the room and loaded into the moving van.

11. I was directed to attempt to disassemble the desk drawer containing the files from the desk. After serveral attempts, this could not be done. After a meeting of management, I was directed to remove the records from the desk drawer and wall unit, I then placed them in a box for CID in the same order as found in the desk and wall unit.

12. The boxes were labelled and removed to the CID vehicle. Within a few minutes, prior to the desk being removed by the movers, the original decision to remove the records was modified. The boxes were removed from the vehicle and brought back into the desk drawer and wall unit exactly as they were prior to the removal. I had removed the records and felt confident that I could replace them to the original location where they were found.

13. I learned that a directive to secure a search warrant had been issued. When the search warrant was received, the CID agents began a detailed inventory of the files as they removed them from the desk drawer and wall unit and placed them into boxes to be transported to a secure facility.

14. Sometime in the evening, while searching for assets to seize, I found in the study or reading room a file

folder containing what appeared to be invoices and jewelry appraisals. Documents such as stock certificates and promissory notes are subject to levy by the Internal Revenue Service. I reviewed the contents of the file to determine whether any document was subject to levy and could be seized. I then handed this file folder to my Group Manager Henry McKinell.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 20th day of January, 1993.

/s/Steve J. Fanguy

STEVE FANGUY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

THOMAS A MOORE, M.D.	*	CIVIL NO. 92-0367
	*	
	*	SECTION: "B"
VERSUS	*	
	*	MAG. 6
BRENDA FELGER, ET AL.	*	
	*	

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DECLARATION OF THOMAS A. MOORE, M.D.

THOMAS A. MOORE, M.D. declares:

1. He is the Plaintiff in the above and foregoing proceeding.

2. Between October, 1980, and April, 1990, he lived and resided with his wife, Dorothy Lynn Moore, at 207 Oak Alley Drive, Houma, Louisiana.

3. The home located at 207 Oak Alley Drive was owned by Dorothy Lynn Moore, a fact that was known by the Internal Revenue Service.

4. At no time did Dorothy Lynn Moore have assets in her name that belonged to Dr. Moore as his nominee, and at no time since May 31, 1985 did she have property in her

name as Dr. Moore's transferee, that is to say, she had her own separate and paraphernal property, a separate income, and separate assets, some of which he had given her out of love and affection as his wife. More particularly, he never owned through Dorothy Lynn Moore as his nominee: a computer system, a stereo system, a sofa, various living and dining room furniture, a china hutch, bedroom furniture, a large opal, small opal, ruby or an emerald.

5. He never denied consent to any Revenue Office to enter his home for the purpose of inventory and seizure. Indeed, in 1987, Defendant Napveaux did enter his home and examine its contents.

6. He denies that on March 22, 1990, the date of Defendant Felger's Declaration, that he was not in compliance with the district court's enforcement Order of the First Summons. In fact, on March 7, 1990, the district court found tht he was in substantial compliance.

7. He denies that the seizure of property in 1985 was for tax liability for the year ending December 31, 1976.

8. He denies that he ever transferred assets to his children or relatives.

9. He denies that he ever maintained his practice in a secret manner, that he did not maintain an office; or that he concealed any records of his patients and services rendered.

10. He denies that since his marriage to Dorothy Lynn Moore, "all of the family's assets have been titled in

the name of Mrs. Moore,even though the tax debtor's income is the source for Mrs. Moore's income and the assets accumulated by the family."

11. On or about March 6, 1989, he was served with an IRS summons requiring production of patient and billing records for the time period of September 1, 1988 to March 17, 1989.

12. He refused to produce the records on the grounds of the physician/patient privilege.

13. He did not testify on February 21, 1990, or any other time, that he never maintained patient or billing records; only that the records contained diagnostic information and were discarded after a certain period of time following payment or termination of treatment.

14. On March 29, 1990, approximately twenty federal agents came to his home and conducted a lengthy, exhaustive and destructive search and seizure of his things and things belonging to his wife. Some of the agents went directly to his office within the house and began immediately to search anad seize his private books and papers. His lawyer, Charley Schrader, protested that the records were not specified in the Writ of Entry. At this point, one agent threatened to arrest his lawyer if he continued to protest. In mid-afternoon, Mr. Schrader returned to the house with affiant, at which time it was discovered that some of the Defendants were in the process of sealing the records in boxes. Mr. Schrader again protested that the records were not specified in the Writ of Entry and that the Defendants were exceeding the scope of their authority. The Defend-

ants then loaded the sealed boxes and removed them from the house. Later that afternoon, some of the Defendants returned the boxes to the house, but at no time were the records unboxed or replaced in the locations from which they were seized.

15. During the entire course of the search and seizure, the Defendants made no effort to determine which items belonged to him and which items belonged to Dorothy Lynn Moore. Indeed, the Defendants refused to consider any evidence demonstrating that items being seized were not assets of Dr. Moore being held by Dorothy Lynn Moore as his nominee. The majority of the items seized were subsequently returned to Dorothy Lynn Moore because they were wrongfully seized. (Exhibit A).

16. The Defendants seized men's and women's clothing, firearms, paintings, silverware, wine, liquor, china, pots, pans, kitchen utensils, computer discs, records, books, private journals, and other such items that were not particularly described in the Writ of Entry. Attached hereto as Exhibit B is the inventory of items seized prepared by the Defendants.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of March, 1993.

/s/ Thomas A. Moore, M.D.

THOMAS A. MOORE, M.D.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

THOMAS A. MOORE, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 92-0367
	)	Sec. "B" Mag. 6
BRENDA FELGER et al.,	)	
Defendants.	)	

DECLARATION OF BRENDA FELGER

BRENDA FELGER declares:

1. My name is Brenda Felger. I had been a Revenue Officer with the Internal Revenue Service ("Service") for approximately 5 years as of March 29, 1990. My post of duty was in Houma, Louisiana. My total career with the Internal Revenue Service spanned 12 years. I left the employment of the Service as of February 21, 1992. Since then I have been a salesperson and bookkeeper for my husband's business.

2. My duties as a Revenue Officer included collecting delinquent accounts and delinquent returns according to law. At times, as a last resort, I would be forced to take certain enforced collection actions that included seizure of assets belonging to tax debtors.

3. As a Revenue Officer, in February 1990, I received

accounts to be collected from Dr. Thomas A. Moore, M.D. Right away, I became embroiled in summons enforcement proceedings, and requests for nominee liens with respect to the tax debtor's spouse, Dorothy Lynn Heaslip Moore, and a corporatioin, Q-B Tek, Inc. As part of the nominee liens request, I was to seize all assets being nominally held by Mrs. Moore and Q-B Tek, Inc. In early March 1990, I received the necessary approval to take such actions. I proceeded to secure writs of entry to accomplish my task.

4. On March 22, 1990, the writs of entry were approved and signed by United States Magistrate Alma L. Chasez. With this approval, I began to make necessary arrangements to take possession of assets in satisfaction of a tax debt totaling more than 1.2 million dollars.

5. In preparing to take possession of vehicles, household goods, jewelry and real estate, I knew that I would need more than the usual 2 persons necessary for seizure actions,and secured permission to have other Internal Revenue Service employees assist me. In addition, because of the tax debtor's history of being a "tax protestor" and the knowledge of him being a hunter, I felt it necessary to receive additional protection through the Criminal Investigation Division of the Internal Revenue Service. I secured permission for that additional protection.

6. This particular tax debtor had repeatedly challenged and attempted to stop any and all actions taken by the Service; and because of this, I felt it to be appropriate to have easy access during the seizure actions to an attorney from the District Counsel of the Internal Revenue Service

and an Assistant U.S. Attorney. That approval was also secured, and attorney Stevens Moore from District Counsel and Jill Ondrejko from the U.S. Attorney's office in New Orleans made plans to be in Houma on March 29, 1990.

7. I conducted a meeting on March 28, 1990, with all of those who were to take part in the seizure actions. At this time, I went over the writ of entry and the exact purpose of our actions. Each person or team was to do a specific task. Tasks included going to certain banks in the area to levy against bank accounts, IRAs, savings accounts, safe deposit boxes, etc. I do not recall how many teams were involved; however, after each team finished at the banks, they were to proceed to the residence of the tax debtor to assist with inventorying assets. At this meeting I answered all questions and concerns and made it clear that the purpose of our actions were to secure assets that would be used in satisfying the tax debt of Dr. Moore.

8. On March 29, 1990, all persons involved met at 7:00 a.m. at the Internal Revenue service office in Houma. At approximately 8:30 a.m. the necessary Notices of Federal Tax Liens were filed in Terrebonne Parish. At that point, the teams dispersed to perform their assigned duties. The two attorneys stayed at the office in order to answer any team's legal concern, should any arise.

9. At approximately 9:00 a.m. Revenue Officer Eugene Nepveaux, Criminal Investigation Agents D. Philip Guilott and Louis Oubre, III, and myself arrived at the residence of Dr. and Mrs. Moore located at 207 Oak Alley Drive, Houma, LA 70360. Mrs. Moore answered the

door, and I proceeded to explain the purpose of our visit. Mrs. Moore was quite upset and got Dr. Moore.

10. Upon entering the home, I handed a set of writs of entry to both Dr. and Mrs. Moore along with copies of the Notices of Federal Tax Liens. I explained the purpose of our visit was to seize all asssets in the name of Dorothy Lynn Heaslip Moore and Q-B Tek, Inc., held as nominees of Dr. Moore. I explained that the writs fo entry gave us the authority to enter the premises. Dr. and Mrs. Moore began reading their copies of the writs. I further explained that others were taking actions to seize a quarter-boat, certain vehicles, banks accounts, IRAs, etc. Dr. and Mrs. Moore protested the IRS actions. They contacted attorney Charley Schrader, who arrived at the residence shortly thereafter. I re-explained the situation to Mr. Schrader, and he also protested the actions.

11. At this point the other IRS employees began to arrive at the residence to take inventory. I began concentrating on inventorying the assets. Charley Schrader and Dr. Moore continually tried to interrupt myself and the other employees. At one point I was assisted by Agent Oubre in telling Mr. Schrader that if he was going to interfere with our actions, then Mr. Oubre would have to arrest him. Mr. Schrader had been trying to contact Magistrate Chasez but to no avail, so he stated at this time that if arresting him would bring him before Magistrate Chasez then maybe he should be arrested. After that, Mr. Schrader let us alone. At some point around this time, Dr. Moore requested that he be allowed to take a shower since the Service woke him; I obliged him.

12. There were approximately 22 people present at the residence including my group Manager, Henry McKinell, and Branch Chief James Valentine. I continued to answer questions the employees had as they inventoried. Over $3,000.00 in cash was found throughout the home, in drawers and in closets. A floor safe was found hidden under the carpet in Dr. Moore's closet. The safe contained various jewelry items and twelve 100 oz. silver bars.

13. I had several conversations with Dr. and Mrs. Moore, mostly dealing with their anger over the IRS actions. Mrs. Moore felt that we couldn't take the actions we were taking and she repeatedly stated that all the assets being seized were hers and not Dr. Moore's. She stated she couldn't understand how we could live with ourselves after taking this sort of action.

14. Dr. Moore was concerned over certain items being seized. He felt that certain items should automatically be given to him or Mrs. Moore. I took the position that the only items not to be seized would be those exempt by law. I advised Dr. Moore that items might be released later if appropriate. I felt that Dr. Moore's actions were simply delay/stall tactics. I also felt that Dr. and Mrs. Moore had already removed certain jewelry items without my knowing and I wasn't going to take the chance of having anything else removed.

15. In our search for assets to satisfy a huge tax debt, we found a closet full of some sort of wine collection, at least two dozen weapons (guns, rifles, etc.), and some sort of coin collection. I personally inventoried a GMC Van, a Toyota Supra, a Rolls Royce and the coin collection, and

removed items from the floor safe. I also made an attempt at searching Mrs. Moore's luggage as I allowed her to pack some clothing items to be removed from the home to make sure she did not take any assets subject to seizure from the home.

16. I remember that sometime during the seizure, certain records were also located by one of the IRS employees. I was working on inventories, descriptions and the like, and I had nothing to do with locating or reviewing the records. I do recall that the attorneys advised that a search warrant be secured to allow the Service to remove the records located which represented Dr. Moore's account receivable information. Following such advice, the search warrant was obtained.

17. Some employees left the tax debtor's home between 3:30 and 8:30 p.m., but I and a few others stayed until well after midnight. We returned to the residence on March 30 at approximately 8:30 a.m. to finish inventory and storage packing. We completed everything and left the home at approximately 11:30 a.m.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13 day of January, 1993.

/s/ Brenda Felger

BRENDA FELGER

APPENDIX I

EXCERPT FROM REPLY BRIEF FOR THE APPELLANT

93-3271

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH DISTRICT

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4. Finally, Taxpayer's contention (Br. 27) that the District Court properly denied the defendants' motion for summary judgment "because material issues of fact existed as to whether

- 13 -

the defendants could avail themselves of qualified immunity" is incorrect. As our opening brief makes clear, we have argued that none of the defendants' conduct gave rise to a constitutional violation in the first instance. Failing that, there is no basis on which the defendants could be found not to be entitled to qualified official immunity. Further factual material would not assist a reviewing court in evaluating the merits of these arguments. Indeed, as a factual matter, the record in the instant case clearly contains sufficient factual material in the form of affadavits from all of the individual defendants setting forth just what each one was doing at the time relevant to the suit. There is little more that could be brought out in a full-scale trial with respect to each defendant's conduct.

APPENDIX J

Thomas A. MOORE, M.D.,
Plaintiff-Appellee,

v.

Brenda FELGER, et al.,
Defendants-Appellants.

No. 93-3271.

United States Court of Appeals,

Fifth Circuit.

April 29, 1994.

Taxpayer-psychiatrist sued Internal Revenue Service (IRS) agents in *Bivens* action alleging that agents' seizure of patient files and disks as evidence of perjury pursuant to writ of entry to seize property subject to federal tax liens violated his Fourth Amendment rights. The United States District Court for the Eastern District of Louisiana, Frederick J.R. Heebe., J., denied agents' summary judgment motion. Agents appealed. The Court of Appeals, Harlington Wood, Jr., Circuit Judge sitting by designation, held that: (1) writ of entry allowed agents to seize taxpayer's desk and to disassemble it in order to remove it from residence, and thus, agents had lawful right of access to desk in which they discovered patient records; (2) evidence of perjury was immediately apparent when IRS agents found file folders and disks in taxpayer's desk

since agents knew taxpayer told district court that he kept no patient records, and thus, agents were not liable to taxpayer in *Bivens* action for seizing disks and folders; and (3) at time of search of desk, inadvertent discovery requirement was not clearly established for purposes of qualified immunity analysis.

Reversed and rendered.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before WOOD,* SMITH, and DUHE', Circuit Judges.

HARLINGTON WOOD, Jr., Circuit Judge:

This civil suit against several IRS agents stems from years of the recalcitrant conduct of a tax protester. Thomas A. Moore, a Louisiana psychiatrist, failed to pay his taxes for a number of years. As a result, he owed over one million dollars to the IRS, which he refused to deliver. The IRS requested patient records from Moore to determine if Moore's patients owed him for psychiatric services rendered, but Moore testified under oath that he kept no such records.

[1] The IRS asked Moore for permission to search his house for property subject to levy in satisfaction of his tax

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* Circuit Judge of the Seventh Circuit, sitting by designation.

liabilities, but Moore refused the IRS request. As a result, the IRS sought a Writ of Entry from Magistrate Judge Alma L. Chasez to search Moore's residence for property subject to levy, including furnishings and various types of jewelry, and to seize the property discovered.[1] The Magistrate Judge found that the IRS motion was supported by probable cause, and therefore granted the Writ of Entry.

IRS agents searched Moore's residence and premises pursuant to the Writ of Entry, finding a Rolls Royce and two other vehicles, thousands of dollars in cash, jewelry, furniture, and other miscellaneous valuables. One of the pieces of furniture found was Moore's office desk, which was too large to remove for seizure without its disassembly. While preparing to disassemble the desk for seizure, an agent found over one-hundred file folders inside, each with a different person's name on the label. The agent also discovered numerous computer disks nearby. The agent, who was familiar with Moore's testimony that he kept no patient records, inferred that the files and disks might be patient records and therefore evidence of perjury.[2]

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[1] District courts can issue orders, upon *ex parte* application by the government, to enter private premises to seize property subject to federal tax liens. *See* 26 U.S.C. § 7402(a); *see also United States v. Campbell*, 761 F.2d 1181, 1186 (6th Cir.1985); *In re Carlson*, 580 F.2d 1365, 1373 (1978). Those orders, however, are subject to Fourth Amendment limitations. *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 354, 97 S.Ct. 619, 629, 50 L.Ed.2d 530 (1977).

[2] Whether the agent examined the contents of the files is discussed *infra*.

After notifying the other agents and consulting with an IRS attorney and an Assistant United States Attorney, the agents sought and received a warrant permitting seizure of the files and disks. After seizing the files and disks pursuant to the warrant, the IRS discovered 276 records, including 153 patient records and 34 invoices.

In light of the agents' discovery, Moore entered a pre-trial diversion program in which he accepted responsibility for having made false material declarations before the district court during contempt proceedings regarding his record keeping. At that time, Moore did not contend that the search was unconstitutional. Instead, Moore later sued the agents under the authority of *Bivens v. Six Unknown Federal Narcotics Agents,* 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), for twenty million dollars.

The agents moved for summary judgment based on qualified immunity, and Moore responded by claiming that several disputed factual issues existed. Moore contended that as a factual matter: (1) the agents did not discover the records inadvertently; (2) the Writ of Entry did not permit the agents to seize patient records; and (3) it was not immediately apparent that the records constituted evidence of perjury. The district court denied the agents' motion because of the second and third of these disputed factual issues.[3] The IRS agents now appeal from that denial, and Moore contends not only that the district court properly

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[3] The district court did not address the first issue, inadvertence, because two months after the seizure the Supreme Court eliminated the requirement that under the plain view doctrine discoveries must be inadvertent. *See Horton v. California,* 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990).

denied the motion for summary judgment, but also that we lack jurisdiction to hear an appeal at this stage of the litigation.

I. JURISDICTION

[2] As we would have no authority to discuss other issues if this court lacked appellate jurisdiction, we must address that issue first. Moore contends that this court never can hear an appeal from a pre-trial order denying a qualified immunity defense when the facts of the case are contested. That argument is without merit.

[3] As a general rule, pre-trial denials of qualified immunity defenses are appealable as final orders. 28 U.S.C. § 1291; *see also Mitchell v. Forsyth*, 472 U.S. 511, 525, 105 S.Ct. 2806, 2814, 86 L.Ed.2d 411 (1985). That rule does not lose force simply because this court considers the factual allegations composing the claim for relief. *Enlow v. Tishomingo County*, 962 F.2d 501, 508-09 (5th Cir.1992); *Mitchell*, 472 U.S. at 529 n. 10, 105 S.Ct. at 2817 n. 10. This court has exercised appellate jurisdiction when factual disputes relevant to the district court decision on the qualified immunity question were resolvable based on the record. *See, e.g., King v. Chide*, 974 F.2d 653, 656 (5th Cir. 1992) ("We find the record before us adequate to the determination of the necessary fact questions" relevant to the district court decision denying qualified immunity). Were the rule otherwise, plaintiffs always could defeat appellate jurisdiction merely by asserting the existence of a disputed fact, effectively erasing 28 U.S.C. § 1291. Because we can resolve all relevant factual disputes in this case on the record, as will be discussed *infra*, appellate jurisdiction is

proper.

II. THE SEARCH

A. Legal Background

[4] The central issue in this appeal is whether the IRS agents could open Moore's desk without a search warrant specifically allowing them to do so. If opening Moore's desk was permissible, the subsequent seizure of files also was legal given that the IRS agents seized the files pursuant to a valid warrant that particularly described the files. The warrantless search of Moore's desk was proper if: (1) the agents had a right to be in Moore's house; (2) the files were in plain view; (3) the agents had a lawful right of access to the desk drawer in which the agents discovered the files; and (4) the incriminating nature of the files was immediately apparent. *See Horton v. California*, 496 U.S. 128, 136-37, 110 S.Ct. 2301, 2307-08, 110 L.Ed.2d 112 (1990).

This appeal, however, is not about whether the patient records discovered in Moore's files should be suppressed in a criminal context—Moore did not challenge the constitutionality of the search when he was charged with contempt. Rather, this appeal is about whether the officers who discovered the files should be exposed to liability in a civil suit for their actions. The standard of conduct is less exacting for the latter than the former.

Federal officers performing discretionary acts are immune from suits for damages if their conduct "does not violate clearly established statutory or constitutional

rights of which a reasonable person would have known" *Buckley v. Fitzsimmons*, ____ U.S. ____, 113 S.Ct. 2606, 2613, 125 L.Ed.2d 209 (1993). The plaintiff has the burden to come forward with evidence that creates a genuine issue as to whether the defendants' conduct was objectively unreasonable in light of clearly established law. *Cronen v. Texas Dept. of Human Services*, 977 F.2d 934, 939 (5th Cir. 1992). Thus, if the agents either violated none of Moore's rights, or if those rights were not clearly established rights of which a reasonable person would have known, the agents are entitled to qualified immunity.

B. The Plain View Doctrine

Regarding whether the agents had a right to be in Moore's house, the first question of *Horton*, 496 U.S. at 136-37, 110 S.Ct. at 2307-08, the district court answered this question affirmatively. The record in this case reveals that IRS agents legally entered Moore's house pursuant to a validly executed Writ of Entry, and Moore does not challenge that point. We therefore are satisfied that the district court found correctly regarding the first prong of *Horton*.

[5] The next question under *Horton* is whether the files were in plain view, *Id.* Once the agents opened the desk, they could see the files clearly. The files were not obscured by other articles in the desk, but instead were hanging so that they were immediately apparent when the desk was opened. Thus, if the agents had a right to open the desk drawer, which is discussed *infra*, the contents were in fact in plain view. The other components of *Horton* merit closer scrutiny.

1. Lawful Right of Access

[6, 7] Moore contends that the Writ of Entry did not specify that the agents could seize patient records. He is correct, but the point is irrelevant. Agents who have a lawful right of access to an area do not have to look the other way if they discover evidence of criminal conduct not specified in a search warrant. *See Horton*, 496 U.S. at 136-37, 110 S.Ct. at 2307-08. That is the central principle of the plain view doctrine.

[8] Moore further contends that the Writ of Entry did not specify that the agents could seize the particular desk in which the agents discovered the files. Although the Writ of Entry did not name each individual piece of furniture, doing so was impossible—Moore would not let the IRS agents into his house. The Magistrate Judge found that probable cause existed to believe that Moore's house had furnishings subject to levy inside, a finding Moore does not contest.

Although the Writ of Entry listed several specific types of furniture, it specifically stated that it was not limited to those items, and desks certainly are furnishings. *See American Heritage Dictionary* 540 (2d ed. 1982) ("**furnishings**. The furniture, appliances, and other movable articles in a home or office."). Given the size of the desk, it was reasonable to disassemble it for transportation from Moore's residence. Implied in the Writ of Entry was the power to do what was necessary to effectuate the seizure, and disassembling the desk was necessary. The agents therefore reasonably believed, and were correct in their belief, that they were entitled to open the desk.

[9] Moore contends that the agent who opened the desk believed that the desk might contain patient records. What the agent expected to find when he disassembled the desk, however, is irrelevant under *Horton*.[4] As the Court noted in *Horton*, "[t]he fact that an officer is interested in an item of evidence and fully expects to find it in the course of a search should not invalidate its seizure if the search is confined in an area and duration by the terms of a warrant...." *Id.* at 138, 110 S.Ct. at 2309. Although the IRS agents were acting under the authority of the Writ of Entry rather than a warrant, as was at issue in *Horton*, the Writ of Entry allowed the agents to seize Moore's desk, satisfying the "lawful right of access" prong of *Horton*.

2. Immediately Apparent Evidence of Perjury

[10] Moore contends that evidence of perjury was not immediately apparent from looking at the file folders and disks. First, he contends that he did not testify that he kept no patient records. Although this is a "disputed fact," it cannot support the denial of summary judgment because it runs contrary to the evidence in the record. The district court, when holding Moore in contempt, told him that "[y]ou testified that you have deliberately not kept records. You may have done it inadvertently in the past and it got you into trouble, now you are doing it deliberately and there are no records...." Thus, the district court was under the impression that Moore testified that he kept no patient records.

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[4] The fact that *Horton* eliminated the inadvertence requirement of the plain view doctrine is discussed further *infra*.

The district court formed that impression based on the following exchange. The district court asked, "Dr. Moore, you don't have any administrative records, is that correct?" Moore replied, "No, sir, but this is about to be corrected." Based on Moore's statements, it was reasonable (and accurate) for the IRS agents to believe that Moore testified that he kept no patient records. In fact, after the agents discovered records in Moore's desk (only 22 days later), Moore accepted responsibility for making false declarations before the district court regarding his lack of records. Moore cannot now disavow his admission of responsibility to preserve the viability of his civil suit.[5]

[11] Moore also argues that only the names on the file folders discovered by the agents were immediately apparent, and that evidence of perjury could only be ascertained by opening the folders.[6] Given the particular facts of this case, that argument is without merit. The IRS agent who discovered the files knew that Moore was a psychiatrist, and was familiar with Moore's testimony that he kept no patient records. It hardly requires great mental acuity to ascertain that over one-hundred file folders labelled with different names in the office desk of a psychiatrist might constitute patient records, records that not only might be evidence of perjury, but also a collection asset to the IRS. We are satisfied with the agent's affidavit that he

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[5] Of course, there exists the corroborating proof of the 276 records. Moore never claimed that he created those records in the twenty-two days preceding the search (a claim that would have stretched his credibility to the limits).

[6] This argument is not an "immediately apparent" argument as much as it is an argument that the records were not in plain view.

did not open the files until after obtaining a search warrant, given that Moore presented no contrary evidence.[7]

This case is not like *Arizona v. Hicks,* 480 U.S. 321, 107 S.Ct. 1149, 94 L.Ed.2d 347 (1987), in which an officer investigating a shooting moved a stereo from against the wall to check the serial number printed on its rear in order to determine if the stereo was stolen. The officer in *Hicks* had no probable cause to believe that the stereo was stolen, *id.* at 325-26, 107 S.Ct. at 1152-53, and the mere existence of a stereo does not immediately cause one to think "stolen." Here, however, the discovery of over one-hundred file folders individually labelled by name in the desk of a psychiatrist would immediately cause one to think "records." Knowing that Moore said there were no records, the immediately following thought is "perjury." The mental leap required to conclude that patient records may constitute evidence of perjury under these particular facts is no greater than the leap required to conclude that a bag of white powder seized in a gang's hideout may constitute evidence of possession of a controlled substance. *See United States v. Jolio Prandy-Binett,* 995 F.2d 1069, 1073 (D.C.Cir.1993).

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[7] Moore asserted generally that agents "went directly to [my] office and began immediately to search and seize [my] private books and papers," but Moore neither contended that an agent opened the folders in question, nor did he witness such conduct. Moore claimed that his attorney witnessed some of the conduct in question, but again does not state that the attorney saw anyone open the files and examine their contents. Additionally, no affidavit appears in the record from the attorney Moore claims witnessed the conduct. Moore did not meet his burden to come forward with evidence creating a genuine issue of material fact on this point. *See Cronen,* 977 F.2d at 939.

3. Inadvertent Discovery

[12] Moore contends that the IRS agents specifically searched for patient records rather than property for seizure. *Horton*, however, eliminated the inadvertent discovery requirement formerly associated with the plain view doctrine. 496 U.S. at 141-42, 110 S.Ct. at 2310-11. As such, Moore cannot claim that the agents violated his constitutional rights for the purposes of a *Bivens* action—the right to which Moore claims entitlement no longer exists. *Siegert v. Gilley*, 500 U.S. 226, ____, 111 S.Ct. 1789, 1793, 114 L.Ed.2d 277 (1991) (determining "whether the plaintiff has asserted a violation of a constitutional right at all" is a "necessary concomitant" to determining whether the defendants violated a clearly established right); *see also Spann v. Rainey*, 987 F.2d 1110, 1114 (5th Cir.1993) (officers are entitled to qualified immunity if they did not violate rights secured by the Constitution). The district court correctly omitted any analysis of inadvertent discovery.

[13] Even under the law as it existed at the time of the search, the inadvertent discovery requirement was not clearly established for the purposes of qualified immunity analysis. *See Buckley*, ____ U.S. at ____, 113 S.Ct. at 2613. Several courts had questioned the inadvertent discovery requirement before the search of Moore's residence took place, and only a plurality of the Supreme Court originally propounded the requirement. *See Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). The Supreme Court had granted certiorari in *Horton* by the time of the search, further casting doubt on the continuing validity of the inadvertence requirement at the time. Thus

even if a defunct constitutional right could support a *Bivens* action, the agents would be entitled to qualified immunity because the right was not clearly established at the time of the search.

III. CONCLUSION

This court has jurisdiction to decide the issues in this case. Moore has raised no factual issues which cast doubt on the constitutionality of the IRS agents' actions. The agents entered Moore's residence pursuant to a valid Writ of Entry,[8] discovered Moore's files in plain view while executing the Writ of Entry, and seized the contents of the files pursuant to a valid warrant. The district court therefore should have granted summary judgment in favor of the defendants in Moore's civil action based on qualified immunity.

The order denying summary judgment is REVERSED, and judgment is RENDERED in favor of the defendants.

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[1] One agent named in Moore's suit, MacDuffie Herrod, was on leave during the events in question, and Moore agrees that summary judgment should have been granted as to defendant Herrod. That conclusion, however, loses importance given that the district court should have granted qualified immunity in favor of all of the IRS agents.

APPENDIX K

APPELLANTS BRIEF TO SHOW HIS COMPLIANCE WITH CIVIL SUMMONS AND IN OPPOSITION TO THE RULE OF CONTEMPT

UNITED STATES of AMERICA, ET AL.,

Plaintiffs-Appellees,

versus

THOMAS A. MOORE, M.D.

Defendant-Appellant

On Appeal from the
United States District Court
Eastern District of Louisiana

CERTIFICATE OF INTERESTED PERSONS

This Certificate of Interested Persons is filed on behalf of Thomas A. Moore, M.D., pursuant to Local Rules of the Fifth Circuit 28.2.1

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluated possible disqualification or recusal.

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STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully submits that oral argument of this case would be appropriate in the event the Court has reservations arising out of Pro Se Counsel's unfamiliarity with some aspects of form in the presentation of his written brief.

This case involves complicated issues surrounding the actions of various Agencies and numerous employees of the Government: administratively, procedurally, and legally, in the pursuit of gaining Appellant's compliance with A Civil Summons. Appellant's oral argument would permit the Court the opportunity to thoroughly review the facts and actions of both sides which led to the ruling of Contempt by Hon. Judge Robert F. Collins, which is the subject of this Appeal.

Appellant avers there are important legal issues which involve the propriaty and motivation of the officials in this case in the use or misuse of their discretionary powers. The possibility of overt or covert, intentional or mistaken, misuse and malipulation of the power of the Courts is an issue which may beg further exploration.

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STATEMENT OF JURISDICTION

This Court has jurisdiction of this appeal pursuant to 28 U.S.C. #1291 providing that the Courts of Appeal have jurisdiction of appeals from all final decisions to the District Courts of th United States.

STATEMENT OF ISSUES FOR REVIEW

I

Whether the District Court consistently displayed an understanding of what the Summons sought and how compliance could be demonstrated.

II

Whether the Court became confused by the issuance of a second Summons on March 5,1990, not at issue in these proceedings.

III

Whether the Court's order to produce further (non-existent) documents placed an impossible burden on the Appellant.

IV

Whether the Court's order to the Appellant of May 30,1990, was consistent with the Court's statements of March 7, 1990, when the Court stated that the burden of seeking further proof of the Appellant's claim of compliance was on the Internal Revenue Service.

V

Whether the Court erred in allowing the introduction of records which Appellant's counsel alleged were gained through illegal search. Whether this error was compounded

by the admission of these records after the Affidavit and testimony of Agent Brenda Felger was withdrawn by the Government.

VI

Whether anyone other than the Appellant realized that the records seized materially changed between March 7, 1990 and March 29,1990 as the Appellant and his counsel had indicated to Agents Brenda Felger and Steve Fanguy on March 19, 1990, thereby making the whole issue of the seized records one of comparing "Apples" to "oranges".

VII

Whether the conduct of counsel for the Government was an elaborate attempt to bury the over zealous acts of those involved in the knowing, egregious, and malicious actions of March 29 and 30, 1990.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

90-3426

UNITED STATES of AMERICA, ET AL.,
Plaintiffs-Appellees,

versus

THOMAS A. MOORE, M.D.
Defendant-Appellant

APPELLANT'S BRIEF TO SHOW HIS COMPLIANCE WITH CIVIL SUMMONS AND IN OPPOSITION TO THE RULE OF CONTEMPT

Summary of Argument

Now into Court comes Thomas A. Moore, M. D., Pro Se, to respectfully present evidence that he has complied with the Internal Revenue Service Summons as ordered by the UNITED STATES DISTRICT COURT, SECTION: "C" (5), on October 20, 1989, and therefore the Court erred in the Ruling of Contempt entered by the Hon. Judge Robert F. Collins on June 6, 1990 in Civil Action No: 89-2451. Defendant- Appellant, therefore, prays for relief from the Ruling of Contempt.

Argument

This action arises out of a request by the Internal Revenue Service for Judicial enforcement of an Internal Revenue Service Summons issued to the Defendant-Appellant (Dr. Moore) on March 6, 1989, to appear before Agent Eugene Nepveaux on March 17, 1989.

The Summons requested:

A. All administrative documents or records relating to Accounts Receivable of Thomas A. Moore, M.D. from September 1, 1989 through March 17, 1989, which reflect

    1. name of patient/client
    2. Address and telephone number of patient/client
    3. Amount owed by patient/client as of the date such testimony is given

B. All administrative documents or records relating to Accounts Receivable of Thomas A. Moore, M.D. from September 1, 1988 through March 17, 1989, which reflect

    1. name of Insurance Co. or other indemnifier of patient/client
    2. Address and telephone number of Insurance Co. or other indemnifer
    3. Amount owed by Insurance Co. or other indemnifier as of the date such testimony if given

C. All administrative documents of records relating to Statements of Account which reflect the name and/or the address and/or the telephone number of any person receiving the professional services of Thomas A. Moore, M.D. from September 1, 1988 through March 17, 1989.

Dr. Moore's primary objection was that the information sought by the Summons was protected as coming within his "zone of privacy" as a psychiatrist, and would therefore violate the physician/patient privilege. The Court's order enforcing the First Summons is currently on appeal before the Fifth Circuit Court of Appeals. On December 28, 1989, however, the Fifth Circuit denied a stay order.

On January 9, 1990, Dr. Moore and his counsel, Mr. Charley Schrader, (Mr. Schrader) met with Agent Eugene Nepveaux and Dr. Moore persisted in his objections to the Summons, citing what he felt was a conflict with Louisiana law, and fearing that compliance may cause harm to those to whom he had special obligation, i.e., his patients. The government filed a rule to show cause why Dr. Moore should not be held in contempt, and a hearing was set for February 21, 1990.

Dr. Moore, still seeking to protect the privacy of those to whom he had special obligation, i. e., his patients, while at the same time not wishing to appear contumacious, delivered a number of documents to the office of Hon. Judge Robert F. Collins on February 20, 1990. These documents in-

cluded; a copy of his patient service log book, a copy of the billing form used by his office *which contained the patient's diagnosis,* and a listing of the patients treated from September 1, 1988 to March 17, 1989, the period covered in the Summons.

A review of the Court Transcript of the February 21, 1990 Hearing reveals considerable confusion about the nature of what was actually being sought by the Summons.[1] This continued in the May 16, 1990 Hearing.[2] Review also notes Dr. Moore's statements of his willingness to comply to the best of his ability.[3] Following insstructions by the Court to Dr. Moore,[4] the Court reset the matter for March 7, 1990, (see minute entry of February 26,1990) to allow Dr. Moore to comply.

When neither Dr. Moore nor his counsel, Mr. Schrader were contacted by Agent Nepveaux by late the next week. Mr. Schrader contacted agent Nepveaux at the Lafayette office of the Intenal Revenue Service on either Thursday, March 1st, or Friday, March 2nd, 1990. Mr. Schrader was informed that the Case had been trasferred to Agent Brenda Felger in the Houma office of the Internal Revenue Service and a meeting would be set with her.

Dr. Moore and Mr. Schrader met with Agent Felger the following Monday, March 5, 1990 to demonstrate how the documents produced for the Court were used to calculate and generate billing, and to answer any other questions Agent Felger posed. Agent Felger asked Dr. Moore to go home and calculate out the individual amounts per patient and return the next day. In the meeting Tuesday, March 6, 1990, Agent Felger indicated that com-

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Footnote 1 on page A-178
Footnote 2 on page A-180
Footnote 3 on page A-181
Footnote 4 on page A-183

pliance had been met to her satisfaction.[5]

At the Hearing the following day, March 7, 1990, Ms. Jill Ondrejko, counsel for the government, appeared to have her own agenda. She became upset with the fact that the information obtained was old and would not likely result in significant collections.[6] She attempted to have Dr. Moore held in contempt *in advance* for a Summons given on March 5, 1990 for an appearance on March 19, 1990 for more current information.

The Court seemed exasperated that Agent Felger had not used the authority granted her agency by the Court.[7]

Dr. Moore testified he had obtained verification of the list of patients seen in the time covered by the Summons of March 6, 1989, to compare to his patient log by having a list of admissions to his service at Bayou Oaks Hospital prepared by the Medical Librarian of the hospital.[8] Dr. Moore testified he had done everything asked of him in the meeting with Agent Felger.[9]

The Court stated (Page 43, lines 21 through 24: March 7, 1990 Transcript). "**The only purpose of this is to see that you comply with the order that the Court has issued.** The Court is not empowered to get into the issue of the merits of the taxes that you owe."

The court further stated, (Page 45, lines 14 through

Footnote 5 on page A-183
Footnote 6 on page A-186
Footnote 7 on page A-187
Footnote 8 on page A-188
Footnote 9 on page A-189

19: March 7, 1990 Transcript), " I am going to make a finding. I will hold the matter open ***you have complied*** but I can not say that your compliance is complete. There has been a compliance which has just happened with reference to this list, the list has not been investigated to determine its accuracy or its completeness."

Dr. Moore responded, (Page 45, lines 20 &21: March 7, 1990 Transcript). **"I will be happy to verify that— how can we verify that?"**

The Court, (Page 45, lines 22 through 25: March 7, 1990 Trnscript), **"It will be the function of the Internal Revenue Service. I will order you to make yourself available to them."**

Dr. Moore, (Page 46, lines 1 & 2: March 7, 1990 Transcript), "I took an oath and **that list is as complete as the hospital records and my memory will allow."**

The Court, (Page 46, lines 3 through 6: March 7, 1990 Trnascript). "You have a duty to comply with the summons. I will continue the matter as an open matter to be reset ***once further compliance is made by the Internal Revenue."***

Dr. Moore sought some reassurance that the information obtained by the summons would not be used recklessly by the Internal Revenue Service.[10]

The Court's response was, (Page 48, lines 22 & 23: March 7, 1990 Transcript), "That's not the purpose and the Court will do everything to protect those kinds of interests."

The next day, March 8, 1990, Agent Felger sent

Footnote 10 on page A-189

Levies to each and every patient on the lists gained through the Court's enforcement of the March 6, 1989 Summons. No further effort or contact was made with Dr. Moore or Mr. Schrader, to inquire who, if anyone, on the list owed any funds to Dr. Moore. This occurred, despite there own statements. (Agent Felger and Ms. Ondrejko), that the list was now so old as to make it likely useless in the collection action.

It would seem that the Court underestimated the lengths to which Agent Felger and her associates would go to "humble" Dr. Moore.

The only way for the Internal Revenue Service to verify the completeness of the list of patients rendered to the Court by Dr. Moore was to check it against the patient hospital record numbers which Dr. Moore had included on his list. Though Bayou Oaks Hospital had resisted production of patient names, when also summoned by Mr. Nepveaux, (for the same reason of confidentiality cited originally by Dr. Moore), the Hospital's Adminisstration had indicated a willingness to give the corresponding medical record numbers to verify the completeness of his list. Proof of this is that just such a listing was provided to Mr. Michael A. Mayhall, Attorney, acting in Dr. Moore's behalf May 21, 1990. (Exhibit #1)

Alas, Agent Felger never bothered. Instead, she found new enthusiasm in her collection efforts against Dr. Moore, when, on March 14, 1990, without any corroborating inquiry into the facts, she filed Liens against all of the property of Dr. Moore's wife, naming Mrs. Dorothy Lynn Moore by "Fiat" as Dr. Moore's "Nominee".

The above was not known to Dr. Moore and Mr. Schrader when they met with Agents Felger and Steven Fanguy on March 19, 1990. At that meeting the Agents were informed of the formation of Acadiana Psychiatric Services, A Medical Corporation. They were informed of it's purposes and were told that they could participate in and critique the accounting methods which were being developed to give the Internal Revenue Service accountability while safeguarding the confidentiality of the patients. They were also informed that through the operation of the medical corporation, they could collect all the funds generated less only that which the Internal Revenue Service allowed for Dr. Moore's basic living expenses. (Exhibit #2)

On March 29, 1990, at approximately 9 A.M., Agents Felger and Nepveaux, accompanied by two armed Special Agents, forced entry into the home of Mrs. Lynn H. Moore, over her shocked protests, and upon having accomplished entry they presented Mrs. Moore with a *Writ of Entry*, signed by Magistrate Alma Chasez. This *Writ of Entry* was granted on the basis of *Affidavitrs*, sworn "Declarations of a Revenue Officer", signed by Agent Felger, which declared that Mrs. Lynn H. Moore was the "Nominee" of Dr. Moore for all items listed, and an *Esparte Motion* signed by Ms. Jill Ondrejko, Asst. U. S. Attorney.

These Agents were soon joined by sixteen additional Agents who proceeded to scatter throughout the house in a "Helter-Skelter" fashion and, aided by three moving company employees, they began to empty the home of all it's contents. While in the home the Agents conducted a reckless and destructive search of the private papers of

Dr. Moore; and her wholly owned corporation, *Acadiana Psychiatric Services, A Medical Corporation;* Mrs. Lynn H. Moore; and her wholly owned corporation, *Acadiana Family Therapy Center, Inc.* They made, or attempted to make, copies of various documents. They moved out the computer and the computer desk, and packed the records into boxes which they were in the process of sealing when Dr. Moore, who had left the home in the late morning, returned with Mr. Schrader at approximately 3 P.M. Mr. Schrader protested vehemently that the search of records went beyond the scope of the *Writ of Entry.* Dr. Moore and Mr. Schrader left the home after their requests to remove Mrs. Moore's personal journal and her Grandfather's engraved gold-handled umbrella were refused.

Soon afterward, Stevens Moore, District Counsel of the Internal Revenue Service, and Jill Ondrejko, Asst. U. S. Attorney, were summoned to the home. They contacted Special Agent Frederick Boyd in New Orleans, and on the basis of information relayed to him by Stevens Moore and Jill Ondrejko, which was gleaned by them through their prior illegal search, Agent Boyd prepared an Affidavit requesting a Search Warrant to permit them to legally inspect the already illegally packed and sealed documents. The Search Warrant, based upon Agent Boyd's Affidavit, was signed by Magistrate Ivan Lemelle at 5:35 P.M. and then faxed to the Special Agents in Houma. The Agents had been in the house and in the home office where the materials were located for approximately nine hours when they received the document to sanction their previously done deeds.

The egregious, knowing, malicious and wanton ac-

tions of the Agents and Attorneys present have been, and are, the subject of numerous suits. Civil Action, 92-0367, is pending in UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA. (Exhibits # 3, 4, & 5)

This contempt ruling was entered after the Hon. Judge Robert F. Collins resumed Hearing of March 7, 1990 on May 16, 1990 and continued on May 30, 1990. At the Hearing of May 30, 1990, Ms. Ondrejko used the records which had been illegally seized after obtaining a Search Warrant based on materials which had been illegally searched while in the home on a tainted *Writ of Entry.* (Exhibits# 5 & 6) The Court erroneously allowed Ms. Ondrejko to use these materials after she withdrew the Affadavit of Agent Felger re: her confused conclusions about the seized records, along with Agent Felger's court testimony, rather than open the Pandora's Box of the illegality of the Agents conduct on the 29th & 30th of March, 1990. The Court disallowed Counsel for the defendant, Mr. Lemann, the opportunity to expose the illegal and unorthodox conduct of the Agents, thereby creating a double standard.

Despite the statements below:—

The Court (Page 45, lines 22 through 25: March 7, 1990 Transcript), ***"It will be the function of the Internal Revenue Service. I will order you to make yourself available to them."***

The Court, (Page 46, lines 3 through 6: March 7, 1990 Transcript), "You have a duty to comply with the sum-

mons. I will continue the matter as an open matter to be reset ***once further compliance is made by the Internal Revenue."***

--and despite the fact that the sending of Levies on March 8, 1990 to everyone on the list made further investigation of the collection matter moot—
—and despite the fact that no efforts were made by Agent Felger or anyone else to verify the completeness of the list through Bayou Oaks Hospital—

the Court found Dr. Moore guilty of contempt for not producing the records of 24 patients, to whom levies had already been sent.

Conclusion

Argument above alleges:

1. The Court demonstrated poor initial understanding of what information was sought by the summons and the purpose of the information sought.

2. The Court became further confused after the issuance of a second Summons of March 5,1990, which was not at issue in this Contempt Hearing.

3. The Court reversed it's position at the conclusion of the March 7,1990 Hearing, in which it stated further compliance should be the initiative of the Internal Revenue Service, when in The May 30, 1990 hearing, it shifted an impossible burden of proof of compliance onto the Defendant.

4. The court erred in allowing the government to use materials obtained in the illegal search and seizure of March 29,1990 after the government withdrew the testimony and Affidavit of Agent Felger. This error was compounded when Defendant's Counsel was not permited to challenge the legality of the use of these materials.

5. No one at the hearing of May 30,1990, other than the Defendant, grasped the fact that the materials gained through the March 29 & 30,1990 seizure were significantly different from records referred to by the Defendant in the Hearings of February 21, & March 7,1990. These differences are well documented in Exhibit #2

In consideration of the above argument and demonstration of facts, the Defendant-Appellant prays this Honorable Court will find that he made every effort to comply with the Summons of March 6, 1989, and will see fit to reverse the Ruling of Civil Contempt in Civil Action No: 89-2451 made by the Hon. Judge Robert F. Collins and entered against him on June 6, 1990.

Respectfully submitted;

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FOOTNOTES

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1. *From Court Transcript February 21, 1990:*

Page 4, lines 11 through 25.

THE COURT: Lets establish the background of what was called for here. The summons, which issued way back on the 17th day of March, 1989, addressed to Thomas A. Moore, M.D. at 207 Oak Alley Drive, Houma, Louisiana, says you are hereby summoned and rquired to appear before Eugene Nevaro or his designee at the office of the Internal Revenue Service to give testimony and bring with you and produce for examination the following books, records, papers, and other documents relating to persons identified through the period shown. *This is an investigation into the Doctor's tax returns for the years —*

MR. SLATER: No sir.

THE COURT: *Investigation* into the years of 1980, '81, '82, '83, '84, '86 and '87.

MR. SLATER: *That's disputed.*

Page 8, lines 2 through 4

DR. MOORE: ....But as I understood it, I was commanded to bring what I had and not to reconstruct all of this sort of thing. I can give testimony in terms of an attempt to reconstruct amounts owed.

Page 13, lines 10 and 11

DR. MOORE: .....they are not trying to calculate my income here, they are trying to ***collect.***

Page 14, lines 2 through 7

DR. MOORE: Because the only rason to fill in the gaps at this point is not computation of earning. **It is a collection action.**

MR. SCHRADER: But if the Court directs you, you have authorized me to-

DR. MOORE: Yes, I will try to fill in all the gaps that I can, if my memory serves me.

FOOTNOTES (continued)

Footnote 1 continued.*Page 14, lines 15 through 19*

DR. MOORE: I do not have any other records, I would have to interperiate and try — and **for Your Honor' information, the way the thing is, is that it has to do with liability for those years, the years are not under investigation for computation of liability, it is a collection action—**

Page 18, lines 9 through 12

MS. ONDREJKO: Isn't it true that you refused to testify about any of your tax liabilities to the IRS on March 17th?

DR. MOORE: I would be happy to talk about my tax liabilities. I admitted that I owed —

Page 20, lines 24 & 25: Page 21, lines 1 through 3

THE COURT: the only question for the purpose of this hearing is whether or not the subpoena, the summons that issued in this case has been satisfied, I not going into all of the ramifications — we could spend hours and hours on that.

Page 24, lines 18 through 24

THE COURT: This all about money not what treatments you are giving the patient, what their problems or complaints are, *the only question they want to know is how much is your income and what are your expenses and* **what is a proper amount of taxes.**

DR. MOORE: No, **they know that,** they have already taxed me.

Page 25, line 3 through 12

DR. MOORE: **This is a collection action** and —

MR. SLATER: If Your Honor please, may I interrupt for a second. I believe Miss Ondrejko will agreee with me that *the whole purpose of these proceedings is not try and establish income other than for the purpose of taking it, its not trying to find out income tax as such, it is purely a collection, seizure process.*

FOOTNOTES (continued)

Footnote 1 continued

MS. ONDREJKO: *That's correct, Your Honor, its a liability case,* **we know the liabilities, we are just trying to collect them.**

Page 26, lines 8 through 25

THE COURT: Is there any reason, since he is here and available now, I would have him go over to the office of we can furnish you with an office here and supply all the information he has about these matters you have any objection to them getting the documents that you submitted to me, which was a list of patients, saying certain of these patients were at risk as well as photocopies of an appointment book which contained first names and inititals, you would have to figure out which names appear to which initials and you would have to compile all of that and try to figure out how many appointments were for XYZ and you still didn't get to the bottom line, how much money did Dr. Moore collect for the period of times involved. They wanted to know how much was owed by his patients, we still don't know that.

MR. SLATER: Judge Collins, I believe **the bottom line,** as I see it, **is how much is actually owed presently by these patients so that they can get the money from those patients.**

2. *From the Court Transcript, May 16, 1990*

Page 3, lines 3 & 4

ONDREJKO: Q. And for what purpose was that summons issued?

Nepveaux: A. **For the purpose of collection.**

Page 5, lines 16 through 22

Mr. Lemann: Q. And you are no longer the revenue agent assigned to this case, is that correct?

Nepveaux: A. No, sir, I am not.

Lemann: Q. And when were you taken off of this case?

FOOTNOTES (continued)

Footnote 2 continued

Nepveaux: A. January first of this year.

Lemann: Q. January first of 1990?

Napveaux: A. Correct

Page 6, lines 6 through 16

The Court: I have a copy of a summons here, apparently, this is the summons. Can you give us more background on this case? What were you seeking, there are certain years indicated etc., what were you seeking to accomplish by this summons?

Nepveaux: Directing it to me, Judge?

The Court: Yes

Nepveaux: What I was attempting to accomplish was to identify those persons who may owe money to Dr. Moore **for the purpose of levee, collection.**

Page 7, lines 8 & 9

Nepveaux: —**once the assessment is made it becomes a collection issue.**

3. *From the Court Transcript, February 21, 1990*

Page 11, Lines 3 through 9

DR. MOORE: I had the log book and I ran copies of these to show that the names in the book correspond to the list of names that I gave and to the services and what was — what earnings were being accrued at that time were being — would be able to be calculated and I would be happy to sit down with somebody and go over that if in fact the Court decides that this should be done.

Page 14, Lines 2 through 7

DR. MOORE: Because the only reason to fill in the gaps at this

FOOTNOTES (continued)

Footnote 3 continued.
point is not a computation of earnings, it is a collection action.

MR. SLATER: But if the Court directs you, you have authorized me to —

DR. MOORE: Yes I will try to fill in all the gaps that I can, if my memory serves me.

Page 14, Lines 15 through 19

DR.MOORE: I do not have any other records, I would have to interpellate and try — and for your Honor's information, the way the thing is, is that it has to do with liability for those years, **the years are not under investigation for computation of liability, it is a collection action,-**

Page 26, Lines 2 through 7

MR. SLATER: So at this time, Dr. Moore is prepared to assure the court that he will make all efforts to comply with the order of the Court within the framework of the documentss actually existing and also in terms of his appearance before the Internal Revenue Service to answer the questions.

Page 27, Lines 3 through 9

MR. SLATER: I fully expect that you will order those documents turned over to the Internal Revenue Service and that will give them the foundation of some of the documentary evidence as I understand, exists, to get the information when they like. I submit that Dr. Moore, since Monday has made a good faith effort to try to comply with the subpoena.

Page 29, Lines 16 through 22

THE COURT: You will have to sit down and interpret them for them.

THE WITNESS: I could do that. Your Honor, may I ask you one

FOOTNOTES (continued)

Footnote 3 continued.
question its a major concern to me. I will create documents from that, that you are speaking of, the documents do not exists now, and I could not produce administrative documents that existed.

4. *From the Court Transcript February 21, 1990*

Page 30, lines 16 through 18

THE COURT: No, you furnish that to the authorities of the Internal Revenue Service and I am really setting this matter in two weeks, the next motion day.

5. *From the Court Transcript March 7, 1990*

Page 12, lines 16 through 24

MS. ONDREJKO: What did you tell Dr. Moore at that Tuesday meeting?

MS. FELGER: At that Tuesday meeting, I told him that I would contact your office and let you know what he provided and that as far as I could tell at this point, and I was using my own knowledge not any court knowledge because I am not experienced in that area, that what he had provided is what I would consider substantial compliance because I had nothing to base it other wise to say that what he gave me was inaccurate or incomplete.

Page 16, line 17 through Page 17, line 19

MR. SLATER: Brenda, going to the Monday meeting, you were there, another young lady was there and I was there and Dr. Moore was there, isn't that corrcet.

MS. FELGER: That's correct.

MR. SLATER: Now, Dr. Moore had the original of calendars for the time period subject to the subpoena at that time, is that correct.

MS. FELGER: That is correct.

FOOTNOTES (continued)

Footnote 5 continued

MR. SLATER: And Dr. Moore and particularly I said that Dr. Moore is there and he would offer testimony on anything that you want to know about the information on that document, isn't that correct?

MS. FELGER: That's correct.

MR. SLATER: Now, Dr. Moore was willing to answer your questions, isn't that correct?

MS. FELGER: That's correct.

MR. SLATED: Did you ask him any question at that meeeting that he refused to answer?

MS. FELGER: No

MR. SLATER: Now then, it was offered to you to explain each item of information on those calendars, isn't that correct?

MS. FELGER: That's correct.

MR. SLATER: Dr. Moore offered in his statement to you that he would go down the calendars with you so that he could show how each patient was billed and how to come up with the information that he claimed he had no documents to cover, isn't that correct?

MS. FELGER: That is correct.

MR. SLATER: And was it not you who protested that you didn't want to sit there and go through all of those figures?

MS. FELGER: That is correct.

MR. SLATER: And you specifically requested Dr. Moore in lieu of testimony to actually figure the information out for you?

Page 19, lines 5 through 17

MR. SLATER: Now, at this meeting and during the meeting,

FOOTNOTES (continued)

Footnote 5 continued
did — again, Dr. Moore didn't try to refuse to answer any of your questions?

MR. FELGER: No, he answered every one.

MR. SLATER: Now, there was a discussion at that time between you and I that if the information was produced with a rescheduled meeting for one o'clock the following day, that if the information was produced that you would announce to Mrs. Ondrejko satisfaction to the Internal Revenue Service for the information sought, and that if he had not completed calculations that he could do those and submit them later, isn't that correct?

MS. FELGER: **That is correct.**

Page 20, lines 8 through 24

MR. SLATER: And you looked at the information produced and you announced to me and to Dr. Moore at that time that you were satisfied with the information produced, isn't that correct?

MS. FELGER: With my knowledge at that point, yes, I was — I had no problem with the information produced, again there were no records, so I had nothing to say that what I was given was not accurate so I did advise you and Dr. Moore that at this point I was satisfied.

MR. SLATER: In our conversations there wasn't any reservation about the time frame?

MS. FELGER: No.

MR. SLATER: We produced the records and you told us that you were satisfied?

MS. FELGER: Correct.

MR. SLATER: There was no real unpleasantness at the Monday or Tuesday meeting?

MS. FELGER: No

FOOTNOTES (continued)

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[6] *From the Court Transcript March 7, 1990*

Page 4, lines 4 through 15

MS. ONDREJKO: The problem with this information is now, of course, its stale since this proceeding has been active for over a year — not the Court proceeding but this investigation and Dr. Moore claims that these patients have all paid him and that these debt are no longer due and owing and those that are are uncollectible; therefore, the information that we have sought all along will be of no use to us at this point and we have summoned information from March 17th of '89 to current and Dr. Moore has indicated that he will not comply with that based on the defense that he does not possess the document requested. That, or course, has not gotten into the Court's system at this point.

Page 13, lines 7 through 24

MS. ONDREJKO: All the informatin that is on the papers that the Judge has that Dr. Moore provided, all that, the charges that were due and owing according to Dr. Moore, will the IRS be able to collect any of that money from his patients?

MR. SLATER: Your Honor, I object, that's irrelevant, it is only whether it was proper production.

MS. ONDREJKO: Your Honor, it is relevant is the information is no good.

THE COURT: I sustain the objection, *the issue isn't whether you can collect on it, it is whether it complies with the subpoena that was issued or the summons that issued.* You asked for certain information, the fact that the information is so delayed that you can't make collection woul not have anything to do with whether or not subpoena was complied with. It may involve the issue of contempt.

MS. ONDREJKO: I withdraw the question, Your Honor. No further questions. Your Honor, thank you.

Page 28, line 21 through Page 29, line 4

MS. ONDREJKO: Your Honor, If I may, I know that Mrs. Felger

FOOTNOTES (continued)

Footnote 6 continued
issued a new summons to Dr. Moore bringing all the information current, it has not reached the Court yet and has not been referred to our office, however, I am sure she would tell you that when she gave the summons to Dr. Moore he told her that he would not comply with this summons either, which is the same information just up to date because he doesn't have the records. So this problem will not go away. We will keep going through it.

7. *From the Court Transcript March 7, 1990*

Page 23, lines 22, through page 24, lines 1 through 25

THE COURT: When Dr. Moore volunteered to give you information you said that you weren't going to sit there and listen to all of that; why didn't you do that and take notes or a recording of what he was going to say if he has no records and it is all in his head, as it apparently is?

THE WITNESS: Again, the only information he could give me at that time would be the figures, he would not be able to give me any additional information as to address, phone number, because that was not in his head and the information for the charges was not in his head either there were on calendars and he had deciphered for me and had given me that charge for each calendar.

THE COURT: The crucial thing you want to know is how much is owed by a patient or client as of the date of appearance?

THE WITNESS: A-huh.

THE COURT: You did have a list which he supplied the last time of patients, didn't you?

THE WITNESS: Yes I did.

THE COURT: Did you go down that list and ask him for example, how much does Mr. Smith owe you as of right now?

THE WITNESS: No, I did not. When I asked him if there were

FOOTNOTES (continued)

Footnote 7 continued
any amounts still due on these patient he advised me no there were not, they were either paid or deemed uncollectible at this point.

THE COURT: Isn't your purpose to find out who owes him money and then to go get the money from those people and apply that against his tax liability to the government.

THE WITNESS: Yes, it is.

Page 27, Lines 9 through 25

THE COURT: Why wouldn't you accept his oral testimony?

THE WITNESS: His oral testimony — I don't think that it was that I would not accept it.

THE COURT: You said that you wouldn't spend the time doing it, you said that you wanted him to reduce it to writing and give it to you.

THE WITNESS: And we would go over it at that time, I don't think that I refused his testimony, it was simply that rather than waste his time, his attorney's time and my time we had the information, he could go back and calculate and let me know what was still due when he did..

THE COURT: When you don't exhaust the avenues open to you then I have to spend the time in court and spend everybody's time who's here in court going over these matters.

THE WITNESS: I apologize, that was not my intention.

8 *From the Court Transcript March 7, 1990*

Page 32, Lines 7 through 16

DR. MOORE: No, I do not. When I presented in the Court two weeks ago today the day before I came to Court I had prepared through going to the hospital where I work and asking the people in medical records department to prepare me a list of my admissions from August

FOOTNOTES (continued)

Footnote 8 continued
1st to March, 1989, that was the only list that I had and they were kind enough to give me that list and I — the list and the addresses and I made that list and was going to give that to the Court.

[9] *From the Court Transcript March 7, 1990*

Page 34, Lines 14 through 22

MR. SLATER: Let me ask this questin, did you seek to furnish the information in good faith that Internal Revenue Service asked for?

DR. MOORE: I believe that I did in fact heroic, I was sick.

MR. SLATER: Lets go to the Monday meeting, did you appear before the Internal Revenue Service?

DR. MOORE: Yes, I did.

MR. SLATER: Did you refuse to answer any questions that she asked?

DR. MOORE: No, I did not.

[10] *From the Court Transcript March 7, 1990*

Page 46, lines 7 through 21

THE WITNESS: Your Honor, I am going the ask one thing of you. You must understand this from my stand point. The issue of names of psychiatric patients going over to the Court is not something which has great precedent. In the Witenburg case the Court refused to admit the telephone messsages of a psychologist when they were trying to determine his liability because he said there was not way of knowing how many of his patients and no way to calculate the income on the basis of that so they refused it. In another case the Court did allow the ideas of the records of a platic surgeon with the guarding of the name because they were drying to calculate his income. I know of no case in which names of patients have been given over to an agency for that agency to go to those patients and interrupt the relationship which is so crucial to their treatment.

FOOTNOTES (continued)

Footnote 10 continued
page 48 lines 15 through 21

THE WITNESS: ... Last week we talked about the level of secrecy that somebody has to be exposed to before they are exposed to an invasion of their privacy for urine tests for drugs, that's being debated and debated and here we will say in a one swoop that a large number of people throughout the country can have unconcerned third parties interfere with the most delicate of medical treatments.

A-191

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

90-3426

UNITED STATES of AMERICA, ET AL.,
Plaintiffs-Appellees,

versus

THOMAS A. MOORE, M.D.
Defendant-Appellant

On Appeal from the
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

EXHIBITS, CASE DOCKET, AND DOCKET EXCERPTS FOR APPELLANT'S BRIEF TO SHOW HIS COMPLIANCE WITH CIVIL SUMMONS AND IN OPPOSITION TO THE RULE OF CONTEMPT

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Exhibits
Taable of Contents

Exhibit # 1
List submitted by Bayou Oaks Hospital showing Hospital Record Number and Date of Admissions to service of Thomas A. Moore, M. D. from September 1, 1988 through March 17, 1989.

Exhibit # 2
Narrative History of "Acadiana Psychiatric Service, A Medical Corporation".

Exhibit # 3
COMPLAINT FOR DAMAGES WITH REQUEST FOR JURY TRIAL with attached *MEMORANDUM TO SUBSTANTIATE INJURY AND DAMAGES*

Exhibit # 4
Minute Entry-Civil Action # 92-0367 (B), United States District Court - Eastern District of Louisiana, entered June 2, 1992

Exhibit # 5
PLAINTIFF'S MOTION TO RECONSIDER THE LEGALITY OF DEFENDANTS ENTRY INTO PLAINTIFF'S HOME-Civil Action # 92-0367 (B), United States District Court - Eastern District of Louisiana

Exhibit # 6
Response to Rule to Show Cause- Civil Action # 89-2451 (C), United States District Court - Eastern District of Louisiana

EXHIBITS (continued)

Exhibit # 7
Civil Docket for Case # 89-CV-2451, United States District Court - Eastern District of Louisiana

Exhibit # 8
Minute Entry-Civil Action # 89-CV-2451, From Hearing of February 21, 1990, United States District Court - Eastern District of Louisiana, entered Februaray 26, 1990

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Minute Entry-Civil Action # 89-CV-2451, From Hearing of February 21, 1990, United States District Court - Eastern District of Louisiana, entered Februaray 26, 1990

Narrative History of

Acadiana Psychiatric Services, A Medical Corporation

Acadiana Psychiatric Services, A Medical Corporation was formed before a Notary Public in Terrebonne Parish, State of Louisiana, on February 28, 1990, and was filed and recorded in the office of the Secretarty of State of Louisiana on March 5, 1990.

Acadiana Psychiatric Services, A Medical Corporation ("Acadiana") was formed and incorporated by Thomas A. Moore, M.D. ("Dr. Moore") on advice of his counsel, Mr. Charley Schrader ("Mr. Schrader"), in order to provide efficiency, accuracy, and verifiability of services rendered by Thomas A. Moore, M.D., and associated para-professionals on contract with "Acadiana", while maintaining the complete confidentiality of persons receiving those service.[1]

To achieve that objective, meetings were held during the month of March, 1990, with Mr. Schrader, Mr. Claude Bergeron, a C.P.A., Mr. Owen Dahl, a Professional Medical Office Consultant, (Delta professionals), Mrs. Dorothy Lynn Moore, Office Manager of "Acadiana", and Dr. Moore. As the suggestions of those professionals were adopted during the month of March, 1990, they were incorporated into the records of "Acadiana" to evolve eventually into the system which would meet the needs of all concerned.

On March 19, 1990, Dr. Moore and Mr. Schrader met with

Footnote 1 on page A-198.

Internal Revenue Service Agents Brenda Felger and Steve Fanguy in connection with a summons issued to Dr. Moore to produce administrative records. Though Agent Felger had been present in Court on Feb. 21, 1990, when Dr. Moore referred to the corporation,[1] "Acadiana's" existence seemed to be a complete surprise to her. Having enlightened her of it's formation and purposes, she was invited to participate in further meetings on "Acadiana's" accounting system to critique and make suggestions to assure that the final system would fulfil the auditing needs of her agency.[2]

The functioning of "Acadiana" was delivered a severe blow on March 29, 1990. On that date Agents of the Internal Revenue Service entered the home of Dr. Moore and his wife, Dorothy Lynn Moore (Mrs. Moore), on a *Writ of Entry* granted by Magistrate A. Chasez, given in response to an *Exparte Motion* based on *Declarations* by Agent Felger that Mrs. Moore was holding certain items as "Nominee" of Dr. Moore. While in the house, Agents searched the office and carried away all of "Acadiana's" newly prepared records.[3] Records had to be totally reconstructed in the following weeks. Nonetheless, attorneys representing "Acadiana" had several meetings with Agents of the Internal Revenue Service in an effort to establish guidelines acceptable to the Agency during the month of April, 1990. These negotiations came to an abrupt halt when the funds of the corporation were levied upon on May 7, 1990 after Agent Felger named "Acadiana" the Nominee of Dr.

Footnote 1 on page A-198.
Footnote 2 on page A-198.
Footnote 3 on page A-198.

Moore.[4]

"Acadiana", a newly formed and operating on funds attained through loans, now found itself assigned by "**Fiat**" with the obligations of Dr. Moore, and unable to meet it's obligations to it's employees and it's contract personnel. Efforts in progress to hire additional employees were scuttled as the corporation found itself crippled by the notoriety surrounding the precipitous seizures of it's property.

"Acadiana" sought the protection of the Bankruptcy Court with the assistance of counsel, Mr. Ron Hof, and filed Chapter 11 on June 6, 1990, Case # 90-12072-TMB. In July, 1990 Mr. Michael Mayhall, a tax attorney, was appointed co-counsel, and an Adversary Suit, *COMPLAINT TO COMPEL TURNOVER OF PROPERTY AND FOR DAMAGES,* was filed in September, 1990 in the Bankruptcy Court challenging the Internal Revenue Service's baseless seizure actions.

Dr. Moore had sought the counsel of Mr. Hof for his individual financial problems and had sought the protection of the Bankruptcy Court, Case # 90-12071-TMB, on June 6, 1990.

The U. S. Trustee objected to Mr. Hof's representation of the two cases, stating there was a conflict of interest between the two separate parties. This objection was sustained by the Hon. Judge T.M. Brahney, and Mr. Joseph Nielsen replaced Mr. Hof as counsel for "Acadiana".

Footnote 4 on page A-198.

"Acadiana" had fully expected that a resolution of the Adversary Suit, recognizing it as *a separate juridical entity,* would have occurred by this time, and the corporation would have it's wrongfully seized property returned. With this the corporation would quickly emerge from Chapter 11, and could conduct it's business as is it's right by law.

"Acadiana" has continued to function despite the needless, baseless, and destructive attack by the Agents of the Internal Revenue Service, "Acadiana" steadfastly denies the claim that it is the "Nominee" of Dr. Moore, A Motion to deny the claim of the Internal Revenue Service will be filed citing the breaches of procedure, and the reckless, malicious conduct of the persons responsible.[5] With the resolution of the issue of the Internal Revenue Service's spurious claim, "Acadiana" believes it can fully satisfy the true creditors by continuing it's business.

Footnote 5 on page A-199.

FOOTNOTES

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1. Dr. Moore was involved in an ongoing controversy with the Internal Revenue Service, Civil Case # 89-2451, and testified in Court March 7, 1990, Page 45; lines 11-13; *"It is because we have formulated the situataion I am incorporating, I am going to keep meticulous records and they can come and dun my salary."* page 47; lines 14-16; *"I am setting up a corporation, all the records will be kept meticulously, they can come and dun my salaly from the corporation."*

2. *In that meeteing Mr. Schrader echoed Dr. Moore's testimony by stating that the Internal Revenue Service could determine what income from "Acadiana" it would allow Dr. Moore to live on, and the Internal Revenue Service would get the balance. Mr. Schrader left the meeting with the understanding that he would meet with Agent Felger the next week. After several calls the next week were not returned, Mr. Schrader went to the Houma Internal Revenue Service office looking for Agent Felger. He was informed she was unavailable, however, her supervisor, Agent Henry McKinell, met with Mr. Schrader and discussed agency policy in regards to the amount of funds Dr. Moore would be allowed for living expenses.*

3 *The actions of the Agents are the subject of a related Civil Case #* 92-0367 currently in THE UNITED STATES DISTRICT COURT-EASTERN DISTRICT OF LOUISIANA in which Dr. Moore alleges the conduct of the Defendants named violated his rights under the Fourth Amendment to the Constitution of the United States. In His minute entry of June 2,1991, the Court stated. *"The Court determines these allegations are sufficiently fact specific to defeat, at this stage in the proceedings, a motion to dismiss or for summary judgement on the grounds of qualified immunity."*

4 The May 7, 1990 seizure followed on the heels of a clandestine and unorthodoz seizure in the closing hours of May 4, 1990, when Agents of the Internal Revenue Service accompanied by Jill Ondrejko, Assst. U. S. Attorney, had a *Declaratin of a Revenue Officer,* signed by Agent Felger; and *Exparte Motion for Writ of Entry,* signed by Jill Ondrejko; and a *Writ of Entry* executed by Magistrate Chasez; all faxed to the Crown Holiday Inn adjacent to the Windsor Court Hotel after 11 P.M. in order to enter the hotel property to seize an automobile which "Acadiana" had acquired a week earlier. This seizure was so hurried that the Levy documents failed to mention anything about "Acadiana". It is

FOOTNOTES (continued)

Footnote 4 continued
as if the naming of "Acadiana" as Nominee the following Monday, May 7, 1990 was an afterthought.

5. These persons are all named as Defendants in Case # 92-0367, UNITED STATES DISTRICT COURT-EASTERN DISTRICT OF LOUISIANA

APPENDIX L

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA, and EUGENE NEPVEAUX, REVENUE OFFICER OF THE INTERNAL REVENUE SERVICE	)	
Plaintiffs-Appellees	)	
v.	)	No. 90-3426
THOMAS A. MOORE, M.D.,	)	
Defendant-Appellant)		

MOTION TO REMAND AND TO SUSPEND BRIEFING SCHEDULE PENDING DISPOSITION OF THE MOTIONS

The United States of America and Eugene Nepveaux, Revenue Officer of the Internal Revenue Service, the appellees herein, by their counsel, respectfully move that the above-captioned case be remanded in order to permit the appellees to move the United States District Court for the Eastern District of Louisiana to vacate its order finding the appellant in contempt of court. The appelles also request that the briefing schedule in the case be suspended pending disposition of the motion to remand

the appeal, and that should the Court deny their motion to remand, the time for filing their brief be extended to 30 days after the date of that denial.

Dr. Thomas Moore, M.D. (taxpayer) is a practicing psychiatrist in Houma, Louisiana. *United States v. Moore,* 5th Cir. No. 89-3896 (August 28, 1992) (slip opinion at p. 6692). Taxpayer did not file federal income tax returns for the years 1977 through 1987 and has made no payments of his 1988 tax liability. As a result, Dr. Moore is indebted to the Internal Revenue Service (IRS) for unpaid taxes, interest, and penalties totaling more than $1 million. *Ibid.*

In 1989, Eugene Nepveaux, the IRS Revenue Officer assigned to collect that delinquent amount from taxpayer, issued a summons requesting that taxpayer produce his Accounts Receivable records indicating the name of each patient, the amount owed by each patient, and the insurance company or other indemnifier of each patient. Taxpayer refused to produce the requested documents on the grounds that to do so would constitute a violation of the doctor-patient privilege under Louisiana law. The United States and Revenue Officer Nepveaux then petitioned the United States District Court for the Eastern District Court of Louisiana for an order enforcing the summons. *Ibid.*

On October 19, 1989, the District Court ordered that taxpayer comply with the summons. (Doc. 16.) [1] On January 2, 1990, this Court denied taxpayer's motion for a

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[1] "Doc." references are to the documents in the original record on appeal as numbered by the Clerk of the District Court and transmitted to this Court.

stay of enforcement of the summons pending appeal. (Doc. 23.) Taxpayer, however, continued to refuses to comply with the summons. As a result, the Government sought to have him held in contempt of court to coerce his compliance. (Doc. 25.)

On February 21, 1990, the District Court (Hon. Robert F. Collins) found taxpayer in contempt of court. (Doc. 30.) The Court, however, explained that it "will withhold imposition of a penalty at this time, to give [taxpayer] the opportunity to purge himself of the contempt." (Doc. 30.) Taxpayer, however, continued to fail to comply with the summons. Accordingly, following a May 6, 1990, hearing, the District Court found that taxpayer's compliance with the summons was incomplete, and that he was in continuous contempt of the original order of the Court. (Doc. 68.)

On May 31, 1990, taxpayer filed a notice of appeal to this Court from the District "Court's judgment of May 30, 1990, finding [taxpayer] in contempt and ordering him to pay a fine and serve jail time." (Doc. 65.) Thereafter, on June 6, 1990, the District Court ordered that "until [taxpayer] fully and completely complies with the Summons, he shall be and is hereby **FINED** the sum of $100.00 per day for 15 days, then $200.00 per day for another 15 days, and thereafter, he is to be incarcerated until the Court finds that he has purged himself of contempt." (Doc. 69.) On that same day, taxpayer filed a voluntary bankruptcy petition under Chapter 11 of the Bankruptcy Code. *United States v. Moore,* 5th Cir. No. 89-3896 (August 28, 1992) (slip opinion at p. 6692). Thus, before taxpayer could be fined or incarcerated for his contempt, the proceedings were stayed

pursuant to 11 U.S.C. § 362. *Ibid.* Folowing the dismissal of taxpayer's bankruptcy proceedings (and the lifting of the automatic stay), this Court, on August 28, 1992, affirmed the District Court's order enforcing the summons issued to taxpayer. *United States v. Moore,* 5th Cir. No. 89-3896 (August 28, 1992).

On September 11, 1992, this office was advised that the IRS has now obtained the sought after information from other sources and, as a result, no longer desires that the summons be enforced. Accordingly, we request that the Court remand this case to the District Court so that the Government may move to vacate the order finding taxpayer in contempt of court.

CONCLUSION

For the reasons stated herein, the appeal should be remanded to the District Court so that the Government may move to vacate the order finding taxpayer in contempt of court. The appellees also request that the briefing schedule in the case be suspended pending disposition of the motion to remand the appeal, and that should the Court deny their motion to remand, the time for filing their brief be extended to 30 days after the date of that denial.

Respectfully submitted,

/s/ James A. Bruton
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APPENDIX M

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

90-3426

RECEIVED
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UNITED STATES of AMERICA, ET AL.,
Plaintiffs-Appellees,

versus

THOMAS A. MOORE, M.D.
Defendant-Appellant

Now into Court comes the Appellant, Thomas A. Moore, M. D., Pro Se, to respectfully request that the Court refuse the request of Appellees to remand and require the Apellees to file their Brief in a timely manner.

GROUNDS FOR REQUEST

The Appellant asks his Motion be granted for the following reasons:

a) Appellees have had a previous extension of time for filing.

b) Apelles' assertions of facts in their *Motion to Remand* demonstrate poor knowledge and

understanding of the train of events leading to this action being before the Court.

c) Counsel for the Appellees' assertion that, "On September 11, 1992 this office was advised that the IRS has now obtained the sought after information from other sources and, as a result, no longer desires that the summons be enforced", strains the credulity of even the most naive.

d) Appellant avers that the *Motion to Remand* represents yet another glib attempt to cover, "The egregious, knowing, malicious and wanton actions of the Agents and Attorneys present—", at the seizures of March 29, and 30, 1990. (See Appellant's Brief-Pages 10, 11, & 12 with ref. Exhibits #3, 4, & 5)

e) Appellant avers that Counsel for the Appellees knew, or should have known, during the May 16, and May 30, 1992 Hearings before Hon. Judge Robert F. Collins, that the Appellant had complied with the Summons of March 6, 1989, and the Affidavit and testimony of Agent Felger was stricken at the request of then Counsel, Asst. U. S. Attorney Jill Ondrejko in a deliberate attempt to mislead the District Court's sitting Judge, the Hon. Robert F. Collins.

f) Appellant avers that the conduct of Counsel in the Hearings of May 16, and May 30, 1990, and

the continuing conduct of successive Counsel may well constitute fraud upon the Courts involved.

g) Appellant prays that Court will inquire into the facts as to the particulars of claimed eleventh hour revelation to present Counsel, "that the IRS has now obtained the sought after information".

h) Appellant respectfully points out that should it come to light that the IRS and it's Counsel had, "the sought after information", as the Appellant and his former Counsel, Mr. Arthur Lemann, III, asserted since May 30, 1990, this Honorable Court would not have had the burden of this action, nor would it have had to allot time used in *United States v. Moore,* 5th Cir. No. 89-3896 (August 28, 1992).

CONCLUSION

Considering the above, Appellant prays this Honorable Court will refuse to remand this to the District Court and require the Appellees to file their Brief as part of their duty in having pursued their actions against the Appellant. Full disclosure should be made to this Honorable Court as to how, and through whom, counsel's claim of "infused Knowledge", came so miraculously on September 11, 1992.

Respectfully submitted:

/s/ Thomas A. Moore, M.D.

Thomas A. Moore, M. D.
Pro Se
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APPENDIX N

COPY

IN THE UNITED STATES
DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

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PROGRESSIVE BANK & TRUST CO.,	)	
Plaintiff,	)	
v.	)	Civil No. 90-1918
	)	Sec. A "5"
DOROTHY LYNN MOORE and UNITED STATES OF AMERICA,	)	
Defendants.	)	

STIPULATION

IT IS HEREBY stipulated and agreed between Dorothy Lynn Moore, pro se, and the United States of America, by and through its undersigned attorney,as follows:

EXHIBIT
A

1. *Progressive Bank* v. *Dorothy Lynn Moore and United States of America*, Case No. 90-1918 Sec. "A" (5) (E.D. La.), will be dismissed with prejudice.

2. The property at issue in *Progressive Bank* v. *Dorothy Lynn Moore and United States of America*, Case No. 90-1918 "A" (5) (E.D. La.), will be returned to Dorothy Lynn Moore ("Mrs. Moore") or retained by the Internal Revenue service as follows:

a. The immovable property located at 207 Oak Alley Drive, Houma, Louisiana, described in paragraph XXIX of the cross-claim will be retained by the Internal Revenue Service.

b. The Rolls Royce described in paragraph XXXIII of the cross-claim will be retained by the Internal Revenue Service.

c. All items listed in paragraphs XXXII, XXXIV, XXXV, XXXVI, XXXVII and XXXVIII of the cross-claim will be returned to Mrs. Moore.

d. The cash described in paragraph XXXIX of the cross-claim will be retained by the Internal Revenue Service.

e. Fifty percent of the fund described in paragraphs XL and XLI of the cross-claim will be retained by the Internal Revenue Service.

f. Fifty percent of the funds described in paragraph XLII of the cross-claim will be retained by the Internal

Revenue Service. Mrs. Moore will not be liable for any federal taxes resulting from the retention of the fifty percent by the Internal Revenue Service.

3. All items returned to Mrs. Moore will be discharged from the federal tax liens securing the federal income tax liabilities of Thomas A. Moore, Sr., ("Dr. Moore"), for the years ended December 31, 1980-1984 and 1986-1989. The nominee notice of federal tax lien filed in the name of Mrs. Moore will be released by the Internal Revenue Service. Mrs. Moore is not the nominee of Dr. Moore with respect to these items.

4. Mrs. Moore does not have any claim, right or interest in the property retained by the Internal Revenue Service.

5. This settlement is not a settlement of the federal income tax liabilities of Dr. Moore.

6. The Internal Revenue service will release the real property located in Mobile County, Alabama, from the federal tax liens securing the federal income tax liabilities of Dr. Moore for the years ended December 31, 1980-1984 and 1986-1989.

7. All other property seized by the Intenal Revenue Service on March 29, 1990, not otherwise provided above, will be retained by the Internal Revenue Service.

s/ Dorothy Lynn Moore

DOROTHY LYNN MOORE
Pro Se

/s/ Jose F. De Leon

JOSE F. DE LEON
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Counsel for United States

CERTIFICATE OF SERVICE

I hereby certify that I have on this 24 day of Oct, 1991 served a copy of the foregoing on all counsel of record via the United States Postal Service, properly addressed, and postage prepaid.

/s/ Illegible